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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/462).

The Counter-Terrorism Committee has received the attached supplementary report from the Philippines, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant
to resolution 1373 (2001) concerning counter-terrorism

02-49370 (E) 010802

Annex

Letter dated 5 July 2002 from the Chargé d'affaires a.i. of the Permanent Mission of the Philippines to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Upon instructions of my Government and in pursuance of your letter of 18 April 2002 concerning the implementation of resolution 1373 (2001), I have the honour to submit herewith the Philippine Supplementary Report (second report) on action and initiatives undertaken by the Philippines against domestic and international terrorism (see enclosure).

I shall be grateful if you would circulate this letter and its enclosure as a Security Council document on counter-terrorism.

(*Signed*) Enrique A. **Manalo**
Chargé d'affaires a.i.

Enclosure

PHILIPPINE SUPPLEMENTARY REPORT (2ND REPORT) ON ACTION AND INITIATIVES AGAINST DOMESTIC AND INTERNATIONAL TERRORISM*

A Report to the Security Council
Counter-Terrorism Committee
in compliance with paragraph 6 of
UN Security Council Resolution 1373 (2001)

* The annexes are on file with the Secretariat and are available for consultation.

PHILIPPINE SUPPLEMENTARY REPORT ON ACTION AND INITIATIVES AGAINST DOMESTIC AND INTERNATIONAL TERRORISM

PROVIDING REPLIES TO THE QUESTIONS / CLARIFICATIONS FROM THE SECURITY COUNCIL COUNTER TERRORISM COMMITTEE, PURSUANT TO PARAGRAPH 6 OF UN SECURITY COUNCIL RESOLUTION 1373 (2001):

Questions relating to Subparagraphs 1 (a) and (b) – The offenses and supervisory mechanism provided for in the Anti-Money Laundering Act of 2001 (AMLA) mentioned in the report appear to be comprehensive in relation to transactions involving funds derived from criminal activity. However, they do not seem to touch on the use, or intended use of funds and other economic resources, whether derived from lawful or unlawful activity, for purposes connected with the terrorism, in particular, or other criminal activity. Does the proposed legislation to amend the bank secrecy laws (BSA) address this need?

During the 28 January 2002 meeting between the Chair of the Philippine Securities and Exchange Commission and the Asia Pacific Review Group of the FATF in Hong Kong, when the issue was raised on the narrow range of offenses, the Philippines clarified that, *although the Act mentions only 14 categories of predicate crimes, the entire scope of unlawful activity actually covers 116 predicate crimes subsumed in various Philippine laws.*

In response to the FATF panel's request for clarification on the meaning of Section 4 of the Act, the Philippine delegation explained that establishing criminal intent is necessary under the Philippine criminal system; however, the same principle is immaterial under special law, as mere knowledge would suffice.

[The Philippine position paper submitted to the FATF on 11 January 2002 dealing with elements of the crime of money laundering is enclosed, for reference].

The AMLA has, in fact, amended the BSA by empowering the Anti-Money Laundering Council (AMLC) to seek court authority to inquire into bank deposits and investments in government bonds, the two accounts covered by the BSA. Whereas before, a case had to be filed in court where the accounts are subject of litigation, the AMLA now allows the filing of the petition to inquire prior to the institutions of any court case. AMLC has to determine only probable cause that the funds in subject accounts are in any way related to an unlawful activity. The draft bill on anti-terrorism and terrorist financing also provide the same provision.

Secondly, as to the comment that the AMLA "does not seem to touch on the use, intended use of funds and other economic resources, whether derived from an unlawful or unlawful activity", the law specifically provides a definition for money laundering offenses under Section 4 of the law. The operative words under the AMLA describing a money laundering offense are "*whereby the proceeds of an*

unlawful activity are transacted, thereby making them appear to have originated from legitimate sources."

The law is clear that there must be an unlawful activity that produces the proceeds. Once the relationship between the unlawful activity and the proceeds, whether they be real or personal property, is established, there is probable cause for the AMLC to exercise its powers under the law. These powers includes the freezing of the account, petitioning the court for authority to inquire, investigating the account for a case build-up and subsequently filing the criminal complaint before the Department of Justice or the Ombudsman, as the case may be. The situation envisioned here is one where the proceeds are the result of the unlawful activity. The money comes after the unlawful activity.

The comment, on the other hand, provides for a situation where legitimate money is used to fund unlawful activity. Hence, the money comes *before* the unlawful activity.

This issue is seen to be particularly relevant to acts of terrorism and terrorist financing. As mentioned, the Philippines is still in the process of having its anti-terrorism and terrorist financing laws enacted and the draft bill now under deliberation in the House of Representatives criminalizes terrorist financing, as follows:

> ***"Financing of Terrorism – It shall be unlawful for any person, group, organization or entity to knowingly provide, collect or hold or possess properties or other financial means; to assist in the provision of property or finances; or facilitate in any way the provision of property or financial and related services for the purpose of facilitating or carrying out any terrorist activity."***

Could the Philippines please also describe how the relevant provisions ensure that the funds intended for the financing of terrorism are not transferred through charitable, religious or cultural organizations.

The AMLC is authorized to initiate investigations on the basis of covered transaction reports and suspicious transaction reports by covered institutions or government referrals of their investigative findings of any unlawful activity enumerated under the AMLA. Once the AMLC finds probable cause that the funds are related to the unlawful activity, it can exercise its powers to freeze and inquire, the latter power to be exercised upon court order where the account is a bank deposit or investment in government fund. Any account, other than the two aforementioned, is subject to a mere administrative inquiry by the AMLC or the agency exercising regulatory powers over the charitable, religious or cultural organization, which in this case is the Securities and Exchange Commission (SEC). The SEC can revoke the registration of the subject organization and, should it find violations or criminal laws, it can file a criminal complaint against the organization's incorporators, directors, officers and employees responsible for the violation before the Department of Justice.

Once the anti-terrorism and terrorist financing law is enacted, it will provide additional measures and deterrents to ensure that charitable, religious or cultural organizations are not used to fund terrorist activities.

Subparagraph 1 (c) – Does the AMLA include the freezing of assets from legitimate sources that are suspected of being intended for criminal, especially terrorist, purposes? Is there any other provision in Philippine law that deals with this question? If not, what are the plans of the Philippine Government in this regard?

Please refer to answer in Subparagraph 1 (a).

The CTC looks forward to receiving information on action taken under the existing legislation, as promised in the report.

The Philippine Government is still consolidating specific cases where the AMLA was used in freezing accounts and assets at banks and financing institutions. The consolidated report will be submitted in a third report.

Subparagraph 1 (d) – As mentioned above, the AMLA does not seem to deal with the destination, as distinct from the origin, of funds and other assets. Furthermore, the proposed Anti-Terrorism Act does not deal with the question of the financing of terrorism. Is there any provision in Philippine law that deals with this question and, if not, what are the plans of the Philippine government in that regard?

The draft bills now under public hearing in the House of Representatives chaired by the Committee on Justice criminalizes both terrorism and terrorist financing.

At present, the AMLA, under its mutual assistance provisions, allows the AMLC to trace the destination of funds suspected or reasonably believed to be related to unlawful activities, by making a request for assistance to foreign jurisdictions. As to funds within the Philippines, the power of the AMLC to petition the court for authority to inquire into accounts suspected of being used for money laundering likewise allows the AMLC to trace their destination.

In the interim that the terrorism and terrorist financing bills are still under deliberation in Congress, pending their enactment into law, the AMLA has provided under its list of predicate crimes and unlawful activities for money laundering offenses, *"hijacking, destructive arson and murder, including those perpetrated by terrorists against non-combatant persons and similar targets."*

Questions relating to sub-paragraph 2 (a) – Please outline the relevant provisions of the laws mentioned in paragraph 7-9 of the report. Please describe how those laws can be applied in the context of transnational terrorism, as compared with the purposes for which those laws were originally enacted. Please focus, in particular, on the means by which

they prohibit recruitment to terrorist groups and the supply of weapons to terrorists. Please provide examples of any successful prosecutions brought under the existing laws against individuals who have carried out terrorist activities in the Philippines or used Philippine territory to carry out terrorist activities abroad.

Please outline the legislation and other measures which exist to ensure that firearms remain within the possession and control of the Armed Forces, enforcement agencies and other institutions lawfully entitled to possess and use such weapons.

Full text of R.A. 6235 and R.A. 6190 have been provided to the CTC. The full texts of the following laws, legal and administrative provisions, which are self-explanatory in their provisions, are included as *ANNEX A*:

PD 1866 as amended by R.A. 8294
Philippine Immigration Act of 1940
Republic Act No. 8799 – the Securities Regulation Code
PD No. 1829
Batas Pambansa Bilang (No.) 39
Revised Administrative Code (RAC) Sec. 897
RAC Sec. 878
RAC Sec. 883
Standard Operating Procedure No. 04
Standard Operating Procedure No. 13
Memorandum for the Secretary of Interior and Local Government recommending the phase-out of the use, manufacture or sale of *Paltik* (home-made) Firearms
PNP Circular No. 5 – Disposition of Captured, Confiscated, Surrendered and Deposited Firearms, Ammunition and Explosives dated 05 September 1994
EO No. 110
EO No. 145 amending EO No. 386
Relevant provisions of the revised Penal Code or Republic Act 3815
Commonwealth Act No. 616

Questions relating to subparagraph 2 (b) – What is the scope of the bilateral agreements mentioned in relation to this sub-paragraph and with which countries have they been concluded?

During H.E. President Gloria Macapagal Arroyo's Working Visit to Malaysia in May 2002, the Philippines, along with Indonesia and Malaysia signed the Agreement on Information Exchange and Communications Procedures (*ANNEX B*). The Agreement will help all three countries to cooperate in preventing the utilization by anyone of their land-air-sea territories for the purpose of committing or furthering of terrorism, money laundering, smuggling, piracy or robbery at sea, hijacking, illegal entry, drug trafficking, marine pollution and illicit trafficking in small arms. The list includes the establishment of standard operating procedures on search and rescue, the setting up of hotlines, the sharing of airline passenger lists, the strengthening of border control, and the conduct of joint training and exercises to combat terrorism and other transnational crimes.

Subparagraphs 2 (c) and (d) – The CTC looks forward to receiving further examples of cooperation with other States, and of action taken to prevent the use of Philippine territory for terrorist activities against other States, in the promised supplementary report. It would also welcome an indication of the specific legal authority for the action taken.

The following are examples of recent actions taken to deny safe haven to terrorists:

The simultaneous arrest of 1) Mohamed Elgabry @ Mohammmad Sabry @ As' Ad Abd Al (Jasbir) @ Muftah Abughara @ Muhamad Sabri @ Mouhammad Sabri Salemah @ Hatim Muhammad Ali (Sabri) @ Nabil Mahmud Hasan, Libyan national, 2) Ahmad Abed Masrie @ Ahmad Masria/Masre/Masri/Masria @ Ahmad Abed Bin Masrie, Palestinian national, 3) Hussam Al Ddeen H. (Ali), Jordanian national on November 23, 2001 in the Simuay Crossing, Sultan Kudarat, Maguindanao province and in Manila in coordination with the intelligence units of the PNP and AFP. These persons are now under the custody of the PNP.

The arrest of Al Ghoul Hadi Yousef, Jordanian national on January 11, 2002 at Balanga, Bataan province in coordination with PNP elements. He is now in the PNP's custody.

The Philippines also prevents terrorists from using its territory in carrying out terrorist acts against other states or their citizens. This was recently illustrated through the arrest last January 15, 2002 in Quiapo, Manila by combined government forces of one Fathur Rahman Al-Ghozi, an Indonesian national, and the capture of several explosive components, fictitious travel and identification documents. Subject is believed to be a key member of the Jemaah Islamiya (JI) in Malaysia, with organized terrorist cells and linkages in the Philippines and Singapore, where the group planned to undertake bombing operations against the U.S. and Israeli embassies, the Australian and British High Commissions, American business establishments, and local military facilities of Singapore. He is now under the custody of the PNP.

Also, the arrest on 21 November 2001 of three terrorists, identified as 1) Vingh Tan Nguyen, 2) Huynh Ngoc Thuan, both Vietnamese-American nationals; and 3) Ito Makoto, Japanese national, involved in bombing activities in Bangkok, Thailand. The arrests were done in coordination with elements of the PNP. Subjects are now detained in Philippine detention facilities.

The legal authority for the action taken by Philippine law enforces in the arrest of the above emanates from various Philippine laws and ordinances, such as illegal possession of firearms, illegal possession of explosives, illegal entry into the country, and others.

Subparagraph 2 (e) – Please clarify whether the reference in relation to this sub-paragraph to extradition procedures would be more appropriate in relation to sub-paragraph 2 (f). Please also clarify whether the references to Annex J should refer to

Annex K (and, in particular, the proposed Anti-Terrorist Act). Please provide a progress report on the passage of that Act, which appears to have been introduced into the Parliament in 1996.

The scope of the proposed Anti-Terrorist Act seems to be confined to terrorism within the territory of the Philippines and not to extend to preparatory acts (for example, the raising of money or the collection and storage of arms) carried out in the Philippines in relation to terrorist acts carried out, or proposed to be carried out, outside its territory. Does the Government have plans to extend the operation of the proposed Act to such circumstances?

What is the extent of the competence of the courts of the Philippines to deal with terrorist acts, or preparations for terrorist acts, that occur outside the Philippines? Please outline the relevant laws or regulations. Please clarify whether a preparatory act of the kind mentioned above gives rise to an offence in the Philippines, even when the terrorist act has been carried out in another country by and against persons who are not nationals or residents of the Philippines.

As indicated in the Philippine report, there is yet no law defining terrorism in the Philippines and providing penalties. This is the reason R.A. 6190 was referred to in the Philippine Report (Annex J). Information provided in relation to subparagraph 2 (e) is also relevant in relation to subparagraph 2 (f).

The House version of the two Senate Bills provided earlier in the initial report, is House Bill 3802 in the current 12th Congress (First Regular Session) which is entitled "An Act Defining Terrorism, Providing Penalties Therefor and for Other Purposes." Enclosed (*ANNEX C*) is a copy of the House Bill.

As to the competence of Philippine courts to deal with terrorist acts, or preparations for terrorist acts, these will be contained in a follow-up third report.

Subparagraph 2 (f) – What is the scope of the bilateral agreements mentioned in relation to this sub-paragraph and with which countries have they been concluded?

Two agreements are highlighted (*ANNEX D*):

1) **Philippines-Thailand Cooperation Agreement on the Prevention and Fight against Criminal Activities**
Signed in Bangkok on 18 December 1998
Ratified by the Philippines on 12 April 1999
Entered into force on 30 April 1999

2) **Philippines-Vietnam Cooperation Agreement on the Prevention and Fight Against Criminal Activities**
Signed in Hanoi on 17 December 1998
Ratified by the Philippines on 09 July 2001
Entered into Force on 17 July 2001

Subparagraph 2 (g) – Please outline the provisions of the various laws and international agreements mentioned in relation to this sub-paragraph. Please indicate how they control the movement of terrorists.

Please describe the practical measures taken or proposed to prevent the forgery of passports and other relevant documentation.

Enclosed (*ANNEX E*) are copies of the agreements mentioned.

Brief background:

In 1967, the Philippines and Malaysia signed an "Agreement on Anti-Smuggling". In March 1995, the 2nd meeting of the Philippines-Malaysia Joint Commission for Bilateral Cooperation (JCM) signed a "Second Protocol" amending the said agreement. This agreement serves as the foundation for the existing Philippines-Malaysia border crossing/border patrol cooperation.

The Philippines and Malaysia have institutionalized border crossing and border patrol cooperation mechanisms under the ambit of the Joint Committee on Border Cooperation (JCBC) established in 1993.

The objective is to promote border cooperation for the purpose of facilitating and regulating the movement of people and goods in the border areas between the two countries as well as to address cross-border crimes such as drug trafficking, hijacking, illegal entry, piracy, smuggling, theft of marine resources, and marine pollution.

The JCBC, in its inaugural meeting in May 1994, recommended the establishment of the Border Patrol Coordinating Group (BPCG). A Working Group on Border Crossing (WGBC) was established under the ambit of the JCBC.

The establishment of the BPCG resulted in the setting up of the Philippine-Malaysia Coordinated Border Patrol Operations (PHIMAL), which conducted its first joint RP-Malaysia naval patrol operations on 12-21 November 1995. It has conducted seven (7) joint operations since its inception.

PHIMAL's objectives are as follows: a) to promote goodwill and friendship between the navies of the law enforcement agencies of the Philippines and Malaysia; b) to test and validate existing naval and maritime law enforcement procedures and doctrines adopted by both countries; and c) to enhance the safety and security of the border area through coordinated border patrol operations.

The WGBC also acts as a comprehensive forum for discussion on border cooperation initiatives between the Philippines and Malaysia. The objective is to promote border cooperation for the purpose of facilitating and regulating the movement of people and goods in the border areas between the two countries. It has held six (6) meetings since its inception in May 1994.

Update on actions taken (Border Crossing):

On 28 February 2000, the 6th Meeting of the WGBC was held in Kuala Lumpur. The Meeting agreed to the following: a) exchange of copies of their respective dummies of border crossing pass through diplomatic channels by 31 May 2000; b) the exchange of comments on the dummies of the border passes, with a view to finalizing the format by 31 August 2000; and c) the tentative date for the implementation of the border crossing pass would be 01 January 2001.

The 6th WGBC meeting likewise agreed to the following: a) to open the border crossing stations in Sandakan in the case of Malaysia, and Bongao in the case of the Philippines; b) that the tentative date for the full operation of both border crossing stations is 01 January 2001 or at an earlier date mutually agreed upon by both sides; c) that the other border stations, namely, Labuan in Malaysia, and Balabac or Taganak in the Philippines would be considered for opening in the future; and d) approved the Terms of Reference (TOR) of the WGBC.

The opening and full operationalization of border crossing stations has been postponed from the original target date of 01 January 2001, as both countries are still in the process of finalizing the format of the border crossing pass.

The two countries may be able to finalize the format of the border crossing pass, and thereby set the opening of the border crossing stations, at the 5th Philippines-Malaysia Joint Commission Meeting, tentatively scheduled in September 2002.

(Border Patrol):

The BPCG has held nine (9) meetings so far. The last meeting of the BPCG was held from 14 to 17 March 2002 in Davao City. The 9th BPCG meeting decided to hold the 7th PHIMAL Operations in May 2002, among others.

On 9-21 May 2002, the 7th PHIMAL Operations were jointly conducted by the Philippine and Malaysian navies. The opening ceremony was held in Sandakan, Sabah from 9 to 12 May while the closing ceremony was held in Zamboanga City on 20 May 2002. (The results of these operations are not yet available).

During the 8th BPCG Meeting held in Kota Kinabalu from 12 to 15 February 2001, it reached the following decisions:

- **to expand the area of operations of the joint border patrol exercise;**
- **to endorse the possibility of establishing a trilateral border patrol cooperation with Indonesia; and**
- **to create a BPCG network to facilitate easy and quick communication among members.**

The 4th PHIMAL Operations resulted in the apprehension of several Malaysian and Filipino fishing boats/vessels engaged in various illegal activities. The Maritime Group, a PNP-led group, conducted operations in 1999 which resulted in the

arrest/apprehension of 12,359 individuals, the recovery/confiscation of goods amounting to Philippine Pesos 42,653,728.00, and the collection by the Local Government Units (LGUs) of administrative fines in the amount of Philippine Pesos 1,154,384.00.

Brief background: RP-Indonesia

The Border Patrol and Border Crossing Agreements between the Philippines and Indonesia was realized in order to enforce effectively the Border Patrol Operations and Border Crossing Activities in the common boundaries of both countries, and to cause the expeditious disposition of the guidelines set forth by the agreements.

In consonance with these agreements, a Border Committee was created in their respective territory to oversee the implementation of the Agreements and srve as a consultative machinery in identifying problems resulting from the implementation and propose amendments to the existing provisions. These committees jointly meet annually to discuss the progress of operations and provisions as well as problems encountered from the implementation of the agreements. Its Secretariat is located at Sasa, Davao City, Philippines and Manado, North Sulawesi, Indonesia, respectively.

Functions:

- **To conduct border patrol operations in the border areas to deter illegal activities as enumerated and defined in the border Patrol Agreement and other acts inimical to the national interest of both countries.**
- **To establish an expeditious and simplified system of control for the entry of qualified border entrants.**
- **To oversee the exclusion, apprehension, deportation and repatriation of illegal entrants.**

Organization/Composition:

The Philippines is chaired by the Commander Southern Command and assisted by the Commander of the Naval Forces South. The members are composed of representatives from the Department of Finance, Customs Collector from the Port of Davao; Department of Justice, Alien Control Officer, Davao; Department of Foreign Affairs, the Chief of the Treaties Division and the Department of National Defense, Plans and Programs.

The Indonesian side is chaired by the Pangkowilhan III and assisted by the Pandaeral. The members are representatives of their Customs, Immigration, Internal Affairs and Defense.

There are six (6) Border Crossing Stations which serve as processing points for border entrants. The RP Border Crossing Stations are situated at Mabila, Balut, Davao del Sur; Cape San Agustin (Nangan), Davao Oriental and Bongao, Tawi-Tawi, while the Indonesian Border Crossing Stations are at Marore, Miangas and

Tarakan, Indonesia. Presently, all the Border Crossing Stations are manned by personnel from the Navies of both countries.

Salient features: Border Patrol Agreement

Both countries reaffirmed the objectives of the "Revised Agreement on Direct Liaison and Coordinated Patrol Operations in ALL Areas between the Philippines and Indonesia" signed on July 25, 1963. It also recognized the desirability to enforce more effective border patrol operations in the areas between the territories of both countries in order to strengthen the enforcement of laws in the border areas governing offenses which undermine the security of either state and to cause expeditious disposition of cases arising therefrom.

Article I (Border Patrol) stipulates that both countries shall conduct border patrol operations to ensure that the border territories, waters and airspace of both countries are not utilized as routes or staging areas for illegal activities or as places of refuge for persons who commit offenses against the security of either state.

Patrols to be carried out may take any of the following forms:

- **Combined operations for a single mission when needed and with a jointly appointed Commanding Officer**
- **Joint Patrols for a certain period, with a jointly appointed Commanding Officer**
- **Coordinated Patrols are carried out continuously with respective Parties' Commanding Officers**

Article V emphasized on the maximum exchange of information, intelligence and publications, which will be undertaken by both countries in accordance with the Intelligence Exchange Procedure set forth in the agreement. And further in Article VI, it directs the establishment of communication procedures, land-based communication stations and standardization of communication equipment.

Relative tot his, the Deputy Chief of Staff for Intelligence, J2, AFP and the Indonesian National Defense Forces, Strategic Intelligence Agency (BAIS, TNI) conducts annual bilateral intelligence exchange (Intelex) conferences to enhance cooperation and maintain cordial relations between the armed forces of both countries. The 28th AFP-TNI Intelex was held last 24-27 September 2001 in Jakarta, Indonesia.

Salient features: Border Crossing Agreement

The Agreement aims to establish a system of control for the entry and exit of both nationals, vessels and goods of each other's territory. It contains an annex known as the Border Crossing System, which has for its salient features the delineation of the border areas, residency requirements, limitation of purpose and stay and the establishment of checkpoints through border crossing stations.

Notably, this Agreement stipulates that nationals of both parties in the border area may enter and travel within the corresponding border area of the other for purpose

regulations. It enumerates the Border Crossing Issuing Card Stations and Border Areas of each territory.

Jointly, the Border Committee of the Philippines and Indonesia had already met and conducted twenty-two (22) and fifteen (15) joint/coordinated patrol operations hosted alternately between the two countries.

The role of the Bureau of Immigration:

The Bureau of Immigration is continuously conducting monitoring and profiling activities in Philippine airports and sub-ports to prevent the entry of suspected terrorists in the country. Intensive intelligence operations are also being conducted to check on suspected terrorists who may be in the Philippines at present.

Deterrents to falsification of passports and other relevant documents:

Please refer to Revised Penal Code Provisions (*ANNEX F*) on forgery/falsification and other fraudulent activities, specifically covered under Title Four Chapter 1 (Forgeries) and Chapter 3 (Frauds). The Immigration Act of 1940 provides penalties for any individual who, when applying for an immigration document, impersonates another individual, or falsely appears in the name of a deceased individual, or evades immigration laws by appearing under an assumed or fictitious name. If he is an alien, he will be penalized for entering the Philippines without inspection and admission by the immigration officials, or obtains entry into the country by willful, false, or misleading representation or willful concealment of a material. These provisions act as a deterrent in preventing the falsification of documents.

Enclosed (*ANNEX G*) is a copy of Republic Act 8239, the "Philippine Passport Act of 1996" and a copy of the requirements for application and renewal of a Philippine passport.

Questions relating to subparagraph 3 (b) – With which countries has the Philippines concluded bilateral treaties on mutual assistance in criminal matters?

The Philippines has an existing Mutual Legal Assistance Treaty with the United States of America (*ANNEX H*), which was signed in Manila on 13 November 1994 and entered into force on 22 November 1996.

Subparagraphs 3 (c), (d) and (e) – What progress has been made in giving effect in domestic law to the various international conventions and protocols relating to terrorism that the Philippines has signed, as listed in the report under this item? The CTC would appreciate further reports from time to time on the progress made.

Have the crimes mentioned in the relevant international conventions and protocols been included as extraditable offenses in the bilateral treaties to which the Philippines is a party?

The Philippines has extradition treaties with Australia, Canada, China, Hong Kong, Indonesia, Republic of Korea, Micronesia, Switzerland, Thailand and the U.S.

The Philippines, Indonesia and Malaysia have an existing Agreement on Information Exchange and Establishment of Communication Procedures.

House Bill 3802 includes acts mentioned under various anti-terrorism conventions signed by the Philippines as crimes of terrorism.

Subparagraph 3 (f) and (g) – The CTC notes that the sub-paragraphs are to be addressed in the follow-up report.

Please could the Philippines indicate whether it is possible under Philippine law for requests for extradition of alleged terrorists to be refused on political grounds.

Section 6 of Department Order (D.O.) No. 94 of the Department of Justice dated 04 March 1998 entitled, "Establishing a Procedure for Processing Applications for the Grant of Refugee Status" (*ANNEX I*) provides parameters for the granting of refugee status in the Philippines. Refugee status shall not be granted if the applicant is proven to have committed:

- **a) a crime against peace, a war crime or a crime against humanity as defined in the international instruments drawn up to make provision in respect of such cases;**
- **b) a serious non-political crime prior o entry into the Philippines; or**
- **c) an act contrary to the purposes and principles of the United Nations**

The Secretary of Justice shall interview the applicant to determine the veracity of the allegations in the application. The Secretary of Justice shall notify the Commissioner, Bureau of Immigration in writing that the application has been given due course. Upon receipt of the notice that an application has been given due course, the Commissioner, Bureau of Immigration shall suspend all cases for the deportation or exclusion of the applicant that are being undertaken by the Bureau (Section 13 of D.O. 94).

Under Section 15 of D.O. 94, the applicant shall be required to provide in the interview all relevant and true information to prove his claim. Any person included in the application may present evidence to support the claim.

Under D.O. 94, the Secretary of Justice shall decide on an application within thirty (30) days after the last date of the interview unless further inquiry is required. If an application is disapproved upon grounds that are established under D.O. 94, any pending immigration case against the applicant which was suspended pursuant to Section 13 of D.O. 94 shall be automatically reactivated and the applicant may be re-arrested and placed in detention.

Under Section 23 of D.O. 94, the refugee status granted to an applicant shall be revoked by the Secretary of Justice if he finds, after investigation, that such status was obtained through willful misrepresentation of material facts.

Please refer to the extradition treaties the Philippines has with Australia, Canada, China, Hong Kong, Indonesia, Republic of Korea, Micronesia, Switzerland, Thailand and the U.S.

Other matters

The organizational chart of the Philippines' administrative machinery, such as police and immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution, will be furnished in the third report.

Philippine Supplementary Report (2nd Report)
On Action and Initiatives Against Domestic and
International Terrorism

List of Annexes

A. Position Paper of the Philippines Presented to the Financial Action Task Force (FATF) – FATF Plenary Meeting 30 January to 1 February 2002

   Sub-Annexes:

   1. Presidential Decree No. 1866
   2. Commonwealth Act No. 613 – An Act to Control and Regulate the Immigration of Aliens into the Philippines
   3. Republic Act No. 8799 – Securities Regulation Code
   4. Presidential Decree No. 1829
   5. Batas Pambansa Bldg. 39 – An Act Regulating the Activities and Requiring the Registration of Foreign Agents in the Philippines
   6. Revised Administrative Code (Basic Firearms Law –Section 878)
   7. Standing Operating Procedure No. 04 (Control and Supervision of the Importation, Sale and Possession and Use of Explosives)
   8. Standing Operating Procedure No. 13 (Licensing of Firearms)
   9. Captured, Confiscated, Surrendered and Deposited (CCSD) Firearms and Phase out Paltik
   10. Captured, Confiscated, Surrendered and Deposited (CCSD) and Phase Out Firearms PNP Circular No.5
   11. Executive Order No. 110 – Directing the Philippine National Police To Support the Armed Forces of the Philippines in Internal Security Operations for the Suppression of Insurgency and Other Serious Threats to National Security
   12. Executive Order No. 145 – Amending Executive Order No. 386 dated 19 December 1989, Establishing a National Crime Information System (NCIS), Providing the Mechanics Therefore and For Other Similar Purposes
   13. Revised Penal Code (Chapter One: Crimes Against National Security)
   14. Espionage Law Appendix "CC" – Anti- Deadly Arrow Law (R.A. 3553)
       Appendix "DD" – Espionage Law (C.A. No. 616)

B. Agreement on Information Exchange and Establishment of Communication Procedures Signed by Philippines, Indonesia and Malaysia
C. House Bill No. 3802 – An Act Defining Terrorism, Providing Penalties Therefore and For Other Purposes

D. Agreement on Cooperation Between the Government of the Republic of the Philippines and the Government of the Kingdom of Thailand on the Prevention and Fight Against Criminal Activities

E. Agreement on Anti-Smuggling Cooperation Between the Government of Malaysia and the Government of the Republic of the Philippines;
Border Patrol Agreement Between the Government of the Republic of the Philippines and the Government of the Republic of Indonesia

F. Crime Against Public Interest (Forgeries)

G. Republic Act No. 8239 – Philippine Passport Act of 1996

H. Treaty Between the Government of the Republic of the Philippines and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters

I. Department Order No. 94 – Establishing a Procedure for Processing Applications for the Grant of Refugee Status

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Security Council

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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/450).

The Counter-Terrorism Committee has received the attached supplementary report from San Marino, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established
pursuant to resolution 1373 (2001)
concerning counter-terrorism

02-49458 (E) 010802

Annex

Note verbale dated 8 July 2002 from the Permanent Mission of San Marino to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of the Republic of San Marino to the United Nations presents its compliments to the Counter-Terrorism Committee and has the honour to refer to the letter dated 15 April 2002 from the Chairman of the Committee to the Permanent Representative of the Republic of San Marino to the United Nations.

The Permanent Mission of the Republic of San Marino to the United Nations has the honour to forward to the Committee the attached report on anti-terrorism measures based on the questions asked by the members of the Committee and on the above-mentioned letter (see enclosure).

The Permanent Mission of the Republic of San Marino to the United Nations also has the honour to attach the following annexes* to the report:

- Draft law entitled "Disposizioni in materia di contrasto del terrorismo, del riciclaggio del denaro di provenienza illecita e dell'insider trading" (provisions concerning counter-terrorism, the laundering of criminal proceeds and insider trading; available in Italian only; English translation to be transmitted shortly).
- Law No. 123 of 15 December 1998, entitled "Law on anti-money-laundering and usury".
- Office of Banking Supervision circular No. 26 of 27 January 1999, entitled "Provisions for authorized intermediaries concerning the implementation of law No. 123 of 15 December 1998".
- Congress of State decision No. 1 of 5 November 2001, entitled "Provisions to monitor and counter the financing of international terrorism".
- Organization of police and law enforcement authorities in the Republic of San Marino.

* The annexes are filed with the Secretariat and are available for consultation.

Enclosure

Referring to the letter dated 15 April 2002 (Ref. S/AC.40/2002/MS/OC.49) written by Jeremy Greenstock, Chairman of the Counter-Terrorism Committee, we are pleased to provide the following clarifications and complements to the report of the Government of San Marino submitted in December 2001 pursuant to paragraph 6 of Security Council Resolution 1373 (2001):

- **Sub-paragraph 1 (b)**

  - The draft law announced orally to the CTC by the San Marino Permanent Mission was actually prepared by the deadline stated. Yet, the procedure for its parliamentary approval was slowed down first by a Government reshuffle occurred in spring, and subsequently – in late spring – by a Government crisis which eventually led to the formation of a brand new Government on 25 June 2002.

    Such draft law includes: i) the criminalization of terrorism and of the financing of terrorism; ii) some additions to the Anti-Money Laundering Law (No. 123 of 15 December 1998) incorporating the modifications recently occurred within the European Union and recommended by FATF and the Council of Europe; iii) a provision on the freezing of capitals or other financial assets or property held, or of any account or business relationship maintained with San Marino banking and financial intermediaries, and iv) rules on insider trading, introduced for domestic reasons. Copy of the draft law is herewith attached with the exception of the part related to insider trading.

    With regard to money laundering, there is furthermore the intention to add a provision criminalizing the laundering of "own proceeds".

  - Since 1990 the economic and financial system of San Marino has relied on a series of modern anti-money laundering provisions, as much was specified in the report submitted by San Marino in December 2001. The Anti-Money Laundering Law (No. 123/1998) and the relevant provisions issued by the Office of Banking Supervision are herewith attached, both in Italian (original) and English (translation).

Article 8 of the Anti-Money Laundering Law sets forth the obligation for financial intermediaries to report suspicious transactions to the supervisory body (Office of Banking Supervision), and for the latter to report to the Court.

Article 9 provides for administrative and criminal penalties in case of non compliance with the relevant law provisions by financial intermediaries.

The anti-money laundering legislation was only recently enacted (it was passed on 15 December 1998 and became effective on 5 January 1999), and therefore it is not possible to identify the crimes that may be considered as major sources of substantial illegal proceeds. So far, the Office of Banking has transmitted to the judicial authorities less than 10 suspicious transaction reports, still under criminal investigation. The statistical data supplied to the relevant international organisations (e.g. the Council of Europe) show that there is no domestic organised crime involved in laundering operations. This is inferred from the absence of reports of offences such as extortion, threats, murder, bag-snatching.

According to San Marino legislation, except for the cases of abetment, anyone concealing or disguising, or transferring money or facilitating the concealment or disguise, or transfer of money, knowing or being evident that such money is proceeds of crimes that do not constitute negligence or misdemeanours, for the purpose of concealing its true origin, commits the crime of money laundering. Equally, anyone using, or facilitating the use of money in economic or financial activities, knowing or being evident that such money is proceeds of crimes that do not constitute negligence or misdemeanours, commits the crime of money laundering. Even if the predicate offence is committed abroad, the fact is nonetheless prosecutable under the San Marino legal system and criminal procedures. Significantly, any property, as well as legal documents, acts or instruments evidencing title to or interest in such property are assimilated to money.

Confiscation in general is provided for in Article 147 of the Criminal Code. As a rule, confiscation is a consequence of the offender's conviction for an offence and it applies to the instrumentalities and intended instrumentalities of the offence, being the property of the offender. It also applies to things which represent the price, the product or "the profit" of the offence. Where the offence consists in the manufacture, use, carriage, possession, transfer or trade of goods which are illegal (e.g. arms, illicit drugs) confiscation applies, independently of a conviction, even to things which are not the property of the offender. Special confiscation provisions apply with respect to money laundering offences. These provisions are in part property-based and in part value-based. Article 3 of Law No. 123/1998 stipulates that conviction for an offence under Law No. 123/1998 results in the confiscation of the money and other assets or proceeds deriving from the offence without prejudice to the other provisions on confiscation in the Criminal Code.

- **Sub-paragraph 2 (a)**

  - Law No. 40 of 13 March 1991 stipulates that any purchase of firearms requires the prior authorization of the *Gendarmeria* (the Military Police). The request for purchasing firearms must indicate the correct identification of the buyer as well as the specifications of the weapon.

- **Sub-paragraph 2 (b)**

  - Because of its small territory (61 square kilometres) facilitating widespread controls and given its long-standing democratic traditions, San Marino has never experienced terrorist acts domestically. Hence, there has never been the need for establishing a special anti-terrorism agency or service.
    According to the draft law, the fight against terrorism is a responsibility of the law enforcement agencies, namely, the *Gendarmeria* (Military Police), the Civil Police and the *Guardia di Rocca* (border and institutional police). The activities of the three Corps come under the coordination of a Coordinator of the Police Forces, while such activities come directly under the Investigating Judge where criminal investigations are conducted (*see annex*).

  - With regard to the functions and tasks institutionally set forth by their respective regulations, the three Corps mentioned above determine their policies and strategies independently.

- **Sub-paragraph 2 (e)**

  - See clarifications to sub-paragraph 1 (b).

  - The draft law sets forth that acts of terrorism committed by anyone outside the territory of San Marino shall be prosecutable.

  - Under the provisions of the draft law, any violent act carried out for the purpose of terrorism, even if committed abroad, is a crime.

- **Sub-paragraph 2 (f)**

  - With regard to mutual assistance, the Republic of San Marino signed bilateral treaties on mutual legal assistance in criminal matters with Italy and France.

There are no other bilateral or multilateral mutual legal assistance treaties in effect. The San Marino judicial authorities, however, may provide general investigative assistance in criminal matters to other states requesting such assistance, even in the absence of a treaty or other formal agreement. Yet, in such cases the judicial authorities must first receive the go-ahead from the political authorities which make a political assessment of whether the request should be processed or not. Once the go-ahead is given, the judicial authorities make their legal assessment as to whether there are any legal obstacles to the execution of the request. If no legal obstacles are identified, the request is executed. This procedure has already been resorted to in cases considered appropriate. The criterion usually adopted by the political authorities in deciding whether to process a request in such circumstances, is the existence of relations between the requesting country and San Marino and the nature of such relations.

As for extradition, San Marino signed bilateral treaties with Belgium, France, Italy, United Kingdom, the Netherlands and USA. In the absence of an extradition treaty a person may still be extradited to the requesting country, subject to a legal assessment of the request by the judicial authorities within the limits laid down in Article 8 of the Criminal Code. As a rule, the extradition of nationals is prohibited unless it is otherwise expressly agreed by treaty. In so far as existing treaties are concerned, the extradition of own nationals is only prohibited by the treaty with Italy, but in this case, there is an obligation to prosecute. In the other treaties, the extradition of own nationals is discretionary, and in the case of France, there is an obligation to prosecute if extradition is refused.

With regard to cooperation among law enforcement agencies, Article 36 of the Convention on Friendship and Good Neighbourhood signed between Italy and San Marino on 31 March 1939 provides for cooperation in administrative matters, including administrative cooperation between police forces.

- **Sub-paragraph 2 (g)**

  - Borders are subject to random controls and constant patrolling by the police forces. Moreover, the San Marino law provisions regulating residence and stay permits (Law No. 95 of 4 September 1997 and Decree No. 111 of 7 October 1997) place a number of restrictions on the presence of foreigners in the country. They also impose an obligation for hotels and other accommodation facilities to identify their customers and report regularly to the *Gendarmeria*.

    San Marino has not acceded to the 1951 Geneva Convention on refugee status.

    It is worth noting that, in order to obtain information on people being investigated, the San Marino police forces have access, through a computerised link, to the database of the Italian

Ministry of the Interior.

Again, the small size of the country enables widespread and continued controls.

- **Sub-paragraph 3 (c)**

  - The European Convention on Extradition (1957) and the European Convention on Mutual Assistance in Criminal Matters (1959) were both signed on 29 September 2000. Their ratification is under way.

    The European Convention on the International Validity of Criminal Judgements (1970), was ratified on 26 February 2002 by virtue of a law of the San Marino Parliament and is entering into force on 18 July 2002.

  - Here is a list of the relevant agreements to which San Marino is a party:
    - Single Convention on Narcotic Drugs (New York, 1961), acceded to on 18 Sept. 2000;
    - Convention on Psychotropic Substances (Vienna, 1971), acceded to on 18 Sept. 2000;
    - Protocol amending the Single Convention on Narcotic Drugs (Geneva, 1972), acceded to on 18 Sept. 2000;
    - UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988), acceded to on 18 Sept. 2000;
    - Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 1990), ratified on 18 Sept. 2000;
    - European Convention on the International Validity of Criminal Judgements (The Hague, 1970), ratified on 26 Feb. 2002 and entering into force on 18 July 2002;
    - European Convention on the Suppression of Terrorism (Strasbourg, 1977), ratified on 26 Feb. 2002 and entering into force on 18 July 2002;
    - International Convention for the Suppression of Terrorist Bombings (New York, 1997), acceded to on 26 Feb. 2002 and entered into force on 11 April 2002;
    - International Convention for the Suppression of the Financing of Terrorism (New York, 1999), ratified on 10 Dec. 2001 and entered into force on 10 April 2002.

- **Sub-paragraph 3 (e)**

  - The International Convention for the Suppression of Terrorist Bombings was acceded to by San Marino on 26 Feb. 2002 and entered into force on 11 April 2002. With regard to the other relevant international instruments related to terrorism, see the list provided in Sub-paragraph 3 (c) above.

- **Sub-paragraph 4**

  - To address the concerns expressed in paragraph 4 of the Resolution, San Marino became a party to the relevant international instruments (see list in sub-paragraph 3 (c) above) and also signed the UN Convention Against Transnational Organised Crime and its two Protocols (New York, 2000), on 14 December 2000.

    With regard to UN Security Council Resolution 1373 (2001) of 28 September 2001, the Government of the Republic of San Marino has adopted several provisions in supervision matters and to counter the financing of terrorism.

    In particular, by terms of its Decision No. 1 of 5 November 2001 – copy of which is attached in Italian and English–, the Government: invited the Office of Banking Supervision to continue to transmit to all banking and financial institutions the lists drafted by the supervisory or police bodies of other countries or International Organisations containing the names of individuals and organisations suspected of international terrorism; ordered that banking and financial institutions immediately freeze the capitals and any other resources or assets deposited with them, as well as block any other transaction suspected of being directly or indirectly linked to the individuals appearing in the above-mentioned lists, and that they promptly report back to the Office of Banking Supervision; and mandated the Office of Banking Supervision to issue all implementation provisions that it may deem necessary and to inflict, where appropriate, the administrative sanctions set forth in art. 9 of Law No. 123 of 15 December 1998 on Anti Money Laundering.

    The San Marino Parliament, during its sitting of 20 November 2001 and concluding a thorough debate on the stance of the Republic of San Marino in the light of the crisis caused by the tragic events of 11 September, adopted an Agenda by terms of which it approved the measures and initiatives taken by the Government, in particular its decision No. 1 of 5 November 2001. The Parliament took note of the fact, *inter alia*, that the Government initiatives have been centred upon "non-neutrality" in the face of terrorism, as terrorism is a factor of instability in the system of international relations, violates international law and constitutes a potential threat to the security of citizens.

    As early as 26 September 2001, the Office of Banking Supervision, by means of a Circular Letter, invited banking and financial institutions: to forward the names of natural and legal persons, both resident and non resident, in relation to whom financial transactions – that are liable of being linked, either directly or directly, to terrorist organisations known worldwide, may be reported; to monitor all transactions conducted by legal persons having entered into business relations of any type with residents in high-risk Arab countries; and to report to the Office of Banking Supervision, where appropriate.

    Since 4 October 2001, the lists of individuals and organisations suspected of international

terrorism disseminated by international supervisory and law enforcement bodies have been forwarded to banking and financial institutions.

The embargoes adopted by the United Nations with Resolutions No. 1267 of 15 October 1999, and No. 1333 of 19 December 2000 were formally received by the Currency Authority on 18 July 2000 and 8 October 2001 respectively.

It is worth recalling that on 11 October 2001 the Government of San Marino expressed, by addressing a note to the relevant US Authorities, its willingness to fully and actively cooperate in the common fight against terrorism.

This note was followed by a phone conversation between the Foreign Minister and the Minister of Finance of the Republic of San Marino and the US Undersecretary of the Treasury, which subsequently resulted in an agreement to cooperate in the fight against terrorism also through the monitoring and countering of any suspicious financial flows which may affect or have affected the financial system of San Marino.

- **Other matters**

  - We reserve to forward as soon as possible the organizational charts of the San Marino administrative machinery. We are here indicating the agencies and entities established to give practical effect to all the legislation that is seen as contributing to compliance with the Resolution:

    - the 3 police Corps (*Gendarmeria*, Civil Police and *Guardia di Rocca*), responsible for territory and immigration controls, and countering organized crime; the overall staff includes approx. 210 employees out of a population of 28,000 residents;

    - the Tax Office, responsible for controls and assessments in tax, fiscal and customs matters; the overall staff includes approx. 120 employees;

    - the Office of Banking Supervision, responsible for supervision over the banking and financial sector, anti-money laundering matters and matters related to the financing of terrorism; the staff is made up of 10 employees;

    - the ICS (Central Bank), responsible, *inter alia*, for controls over currency transactions, the overall staff includes approx. 45 employees.

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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I wirite with reference to my letter of 10 April 2002 (S/2002/393).

The Counter-Terrorism Committee has received the attached supplementary report from the United Kingdom, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

02-49232 (E) 020802

Annex

Letter dated 19 June 2002 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Annexed to the present letter is the further report of the United Kingdom of Great Britain and Northern Ireland submitted in response to the letter from the Chairman of the Counter-Terrorism Committee of 27 March 2002 (see enclosure).

The United Kingdom stands ready to submit any further information requested by the Counter-Terrorism Committee on the United Kingdom's implementation of resolution 1373 (2001).

(*Signed*) Jeremy **Greenstock**

Enclosure

The United Kingdom of Great Britain and Northern Ireland: second report to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resoslution 1373 (2001) of 28 September 2001*

- **Sub-paragraph 1 (c):**

  - **As requirements under this sub-paragraph refer to freezing of not merely funds and other financial assets, please could the UK make clear whether existing measures allow for the freezing of economic resources and other related services of individuals and entities connected with terrorist acts.**

The provisions of UNSCR 1373 (2001) were implemented in UK law by the Terrorism (United Nations Measures) Order 2001 (S.I. 2001/3365). This provided for the freezing of "funds", defined as "financial assets and economic benefits of every kind". The Al-Qa'ida and Taliban (United Nations Measures) Order 2002 (SI 2002/111) amended the definition of "funds" in the 2001 Order to mean "financial assets, economic benefits and economic resources of any kind", thereby providing for the freezing of economic resources.

- **Sub-paragraph 1 (d):**

  - **Please clarify whether SI 2001 No. 3365 extends to persons engaged in legitimate activities inside the UK who are involved in terrorism outside the UK.**

Article 2 of SI 2001 No. 3365 defines terrorism as meaning the use or threat of action, which is designed to influence the government or intimidate the public or a section of the public, and which is made for the purpose of advancing a political, religious or ideological cause. Such action is terrorism when it involves serious violence against a person or serious damage to property, endangers another person's life, creates a serious risk to the health or safety of the public or a section of the public, or is designed seriously to interfere with or seriously to disrupt an electronic system. The same article goes on to make it clear that such action includes action outside the United Kingdom; that references to a person or property include a person or property wherever situated; and that references to the public include the public of a country other than that of the United Kingdom.

Paragraph 3 of SI 2001 No. 3365 prohibits the making available of funds to any person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism, or to persons controlled or owned by them or acting on their behalf or at their direction. Article 4 of the order provides for the freezing of funds held by such persons. In accordance with article 2, such acts of terrorism include acts of terrorism outside the United Kingdom.

  - **Are there any regulations concerning alternative remittance systems?**

UK legislation covers all payment systems. The Money Laundering Regulations 2001 provide for the regulation of all money service operators, including bureaux de change and operators of alternative remittance systems. Under these regulations, money service operators are required to register their operation with Customs authorities. They are also required to report on their transactions and fulfil other requirements established by regulation. Customs authorities have the power to inspect their operations at any time. A copy of these regulations can be found at http://www.legislation.hmso.gov.uk/si/si2001/20013641.htm

* The annexes are on file with the Secretariat and are available for consultation.

- **How does the financial tracking system ensure that funds received by bodies such as charities are not diverted from their stated purposes to terrorist activities?**

The Charity Commission has certain powers to undertake investigations into UK registered charities under the Charities Act 1993. Under this law the Charity Commission will consider complaints and concerns which are supported by evidence. Among those areas which may lead to complaints are:

the funds or other assets of the charity are being used in improper ways;

the charity is undertaking improper political activities.

The Charity Commission has the power during the course of its investigations to freeze the bank accounts of any registered UK charity.

- **Are natural or legal persons other than banks (e.g. attorneys, notaries and other intermediaries in general) required to report suspicious transactions to the public authorities, and if so, what are the penalties attached if such persons omit to report either wilfully or by negligence?**

Yes. Under Section 38 of the Terrorism Act 2000, as amended by section 117 of the Anti-Terrorism Crime and Security Act 2001, if a person believes or suspects that a transaction is suspicious based on information that comes to his or her attention in the course of trade, profession, business or employment, he or she is obliged to report it as soon as is reasonably practicable to a constable. However, information obtained in privileged circumstances by a professional legal adviser:

from a client's representative, in connection with the provisions of legal advice by the adviser to the client;

from a person seeking legal advice from the adviser, or from the person's representative, or;

from any person, for the purpose of actual or contemplated legal proceedings is exempt.

Any person found guilty of the offence shall be liable to imprisonment of up to five years, a fine, or both.

Under a further enhancement to the disclosure provision enacted in the Anti-Terrorism, Crime and Security Act 2001, if a person has reasonable grounds to suspect (or knows or suspects) the fund-raising, use, possession, or laundering of money related to terrorism based on information which comes to the person in the course of business in the regulated financial sector, he or she is obliged to report this as soon as is practicable to a constable.

- **Sub-paragraph 2 (a):**

- **The report outlines restrictions on the export of weapons from the UK but does not indicate how UK law regulates the sale of weapons within the UK. The CTC would be grateful for information on this.**

The main control is the Firearms Act 1968, which divides firearms into four broad categories:

Prohibited Weapons under Section 5 of the Act. This includes machine guns, most self-loading rifles, rocket-launchers, and weapons that "discharge any noxious liquid, gas or other thing". These can only be held under the authority of the Secretrary of State for Home Affairs, granted by the Home Office to those who have need to trade in or handle these weapons (e.g. defence manufacturers). Following the Dunblane shootings, most handguns were raised to this category by the Firearms (Amendment) Act 1997.

Firearms described in Section 1 of the Act may be held on a firearms certificate, which is issued by the local police. This includes most hunting and target rifles, long barrelled pump-action shotguns and muzzle-loading pistols. The police must be satisfied that the applicant can be trusted to possess firearms, and that he has a "good reason" for possessing them. Target shooting and game shooting are generally considered good reasons. Firearms certificates are not issued for self-defence to residents of mainland Britain.

Shotguns described in Section 2 of the 1968 Act may be held on a shotgun certificate, which is issued by the local police. Shotguns of this kind must be long-barrelled and have a limited or no magazine. The police must be satisfied that the applicant can be trusted to have a shotgun, but the applicant does not have to prove that he has a particular good reason to possess the gun. Shotguns of this kind are commonly used for vermin control, game shooting, and for shooting at clay targets.

Low-powered air guns, that is to say guns with a muzzle energy of less than 6ft/lbs for pistols and 12 ft/lbs for other guns, are not subject to certificate control, though there are controls on their use by young people.

A person wishing to trade in firearms must be registered as a firearms dealer with his local police. The police must be satisfied that the person concerned can be trusted to deal in guns, that he has a genuine proposed business, and that the security of his premises is sufficient. A dealer must keep records of the firearms he trades in.

- **Please outline the measures, both legislative and practical, preventing entities and individuals from recruiting, collecting funds or soliciting other forms of support for terrorist activities to be carried out inside or outside the United Kingdom, including, in particular:**
  - **the carrying out, within or from the UK, of recruiting, collecting of funds and soliciting of other forms of support from other countries; and**
  - **deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organisations.**

34 terrorist organisations are proscribed under the Terrorism Act 2000. Under the Act it is an offence for a person to:

belong to or profess to belong to a proscribed organisation;
invite support for a proscribed organisation;
dress or to wear, carry or display an article in such a way or in such circumstances as to arouse reasonable suspicion that he is a member of a proscribed organisation.
The maximum sentence for these offences in 10 years imprisonment.

The offences in the Act more generally apply to anyone planning or supporting in the UK terrorist acts anywhere in the world, whether or not the organisation to which they belong has been proscribed.

It is also an offence under the Act to recruit people in the UK in order for them to receive training abroad in the use of firearms and explosives for terrorist purposes. It is also an offence to raise funds, or provide money where it is intended or suspected that the money will be used for a terrorist purpose.

See also the reply to question 1(d), third tiret, on charities.

- **Sub-paragraph 2 (c):**

  - **The CTC would be grateful to know whether there is a conflict between the use of the Immigration Act 1971 for the removal of individuals mentioned in this sub-paragraph and the requirements of Article 3 of the European Convention on Human Rights.**

As the UK's report S/2001/1232 pointed out, the international obligations of the United Kingdom under Article 3 of the European Convention on Human Rights prevent deportation in certain circumstances, including in some cases where the relevant powers of the Immigration Act 1971 would otherwise be exercisable. In such cases, deportation is not carried out.

- **The report states that where removal is not a realistic possibility, the Anti-Terrorism and Security Act provides for indefinite detention of such persons in the UK. Does this mean indefinite detention in prison?**

Yes. Because of the limited nature of the derogation form Article 5 ECHR, which underpins the power to detain indefinitely, the power is only exercised when detention is a measure strictly required by the exigencies of the public emergency threatening the life of the nation.

- **Sub-paragraph 2 (e):**

  - **Please could the UK provide a list of the minimum and maximum penalties as provided for under the laws which give effect to this sub-paragraph.**

In general, apart from a few specific offences under the Terrorism Act 2000 and Anti-Terrorism, Crime and Security Act 2001, there are no "terrorist" offences under UK law. Terrorists are usually tried under "normal" criminal legislation. Attachment III of the UK's earlier response to the Counter-Terrorism Committee of 19 December 2001 lists the criminal offences covered by the Suppression of Terrorism Act 1978, which enabled the UK to ratify the 1977 European Convention on the Suppression of Terrorism.

It is a general principle that the UK does not have minimum sentences, apart from murder, which has a mandatory minimum sentence of life. However, there are a limited number of mandatory sentences set for serious repeat offending. These include an automatic life sentence for a second serious violent or sexual offence.

With regard to the offences listed in Attachment III of the UK response of 19 December 2001, the following are examples of the maximum sentence available for those offences:

Murder – Life
Kidnapping – Life
Section 4 of the Offences Against the Person Act (OAPA) 1861 (soliciting etc to commit murder) – Life
Section 18 of the OAPA (wounding with intent to cause grievous bodily harm) – Life
Section 20 of the OAPA (causing grievous bodily harm) – 5 years
Section 28 of the OAPA (causing bodily harm by gunpowder) – Life
Section 29 of the OAPA (causing gunpowder to explode with intent to cause grievous bodily harm) – Life
Section 30 of the OAPA (placing gunpowder near a building with intent to cause bodily injury) – 14 years
Taking of hostages (under the Taking of Hostages Act 1982) – Life.

See also the reply to the question on sub-paragraph 3 (d) below, which includes, in the case of relevant international conventions and protocols against terrorism, a description of the relevant criminal offences in UK law and the appropriate penalties.

- **Sub-paragraph 2 (f):**

  - **Is there any legislative enactment governing mutual assistance, or is this only governed through bilateral and multilateral arrangements?**

The Criminal Justice (International Co-operation) Act 1990 provides the general framework for provision of mutual legal assistance, and we do not require the existence of a bilateral or multilateral agreement in order to provide assistance to another country (although we would normally expect reciprocity). The exception is for restraint and confiscation of assets, for which we do require the existence of a bilateral or multilateral agreement. The 1990 Act will shortly be amended in order to enable the UK to ratify the 2000 EU Convention on Mutual Assistance.

- **Sub-paragraph 2 (g):**

  - **Please outline the measures in place to give effect to this sub-paragraph.**

The Government informally sought clarification from the CTC's independent experts on the information required that, in their opinion, was not adequately covered in S/2001/1232. The experts explained that in the context of several European countries having legislation on personal identity cards, the lack of this in the UK could be seen as a vulnerability in the fight against terrorism, with particular regard to the movement of terrorists. The answer below therefore addresses this issue.

After the terrorist atrocities in the United States on 11 September 2001, the issue of introducing an identity card scheme was raised by many people and attracted a considerable degree of media comment. At the time the Government was not planning to introduce an identity card scheme as part of its response to the events of 11 September 2001, but the policy was being kept under review. It was considering whether a universal entitlement card, which could allow people to prove their identity more easily and provide a simple way to access a range of public services, would be beneficial. The Government also said that a scheme could help to combat illegal working and it could also reduce fraud against individuals, public services and the private sector.

The Government has made clear that the introduction of an entitlement card would be a major step and that it would not proceed without consulting widely and considering all the views expressed very carefully. It announced on 5 February 2002that it intends to publish a consultation paper by the summer. This will cover the whole issue of identity fraud and a range of possible responses in the short, medium and long-term, including the advantages and disadvantages of an entitlement card scheme – but also other measures which might be taken to improve the security of existing forms of identification issued by the Government. One of the options, which the Government has already ruled out, is making the failure to carry an entitlement card an offence.

The Government does not consider that an entitlement card scheme would have a significant effect in combating terrorism in the United Kingdom, although in the long term, a scheme might make it more difficult for terrorists to operate under false identities.

However, in the short to medium term entitlement cards would not have a significant effect in combating terrorism due to the fact that it would be many years before cards were widely held.

In addition some terrorists would be able to hold a card legitimately and there is the possibility that cards could be counterfeited by highly organised terrorists with sufficient resources.

- **Sub-paragraph 3 (a), (b) and (c):**

  - **The report sets out the machinery for the exchange of operational information within the European Union (EU) and with the UN, NATO and OSCE. Please also describe how the UK exchanges information with countries which are not members of the EU, NATO or OSCE. Is information exchanged under bilateral treaties or are other administrative arrangements used?**

The UK Central Authority (UKCA), based in the Home Office, is the designated central authority for all requests for mutual assistance in criminal (including terrorist) investigations both in and outside the UK. Requests for assistance (both in and outside) come to the Home Office and are examined and then acted upon by staff in the UKCA.

Requests going overseas from the UK are relatively simple to aciton. The request is reviewed and (if all is found to be in order) it is transmitted overseas, usually to a Ministry of Justice in the country concerned, although certain requests are sent out via the UK's Embassy or High Commission overseas.

Requests coming into the UK require an assessment as to the assistance sought, and how it can best be provided. There are a number of options, depending on the nature of the assistance required. For example, the request may be best dealt with by the police if it related to an alleged criminal offence having been committed overseas, or Her Majesty's Customs and Excise if the information requested related to an illegal drugs matter.

When evidence is obtained within the UK it is sent to the UKCA and then transmitted to the requesting authority. Evidence obtained overseas is sent to the requesting authority in the UK, also via the UKCA.

As explained in the answer above to the question under sub-paragraph 2 (f), the UK does not require the existence of a bilateral or multilateral agreement in order to provide assistance to another country (although we would normally expect reciprocity). There are however, a number of treaties (for example, with most European States, the USA, and SAR Hong Kong) which govern the Mutual Legal Assistance process between the parties. As referred to in the reply to the question on sub-paragraph 2 (f) above, The Criminal Justice (International Co-operation) Act 1990 is the domestic legislation that provides the framework for the work of the UK Central Authority.

- **Sub-paragraph 3 (d):**

  - **It is noted that the UK has ratified all twelve of the relevant international global conventions and protocols relating to terrorism. As the practice of enforcing these ratified conventions differs among countries, please explain how these conventions and protocols are enforced (through separate enactments or by incorporation into relevant existing laws)?**

Treaties do not automatically form part of UK law, and, therefore, before ratifying any treaty the UK must consider whether any amendment of domestic law is required to give effect to the obligations that it contains. This will involve an examination of whether the existing common law or statutory provisions are sufficient to implement the treaty in question, and, if not, legislation will be required to make the necessary amendments. The way in which the main provisions of the twelve international Counter-Terrorism Conventions and the European Convention for the Suppression of Terrorism are implemented, is set out in Annex 1 of this report.[1]

- **Sub-paragraph 3 (e):**

  - **Please could the UK provide a copy of the pieces of model legislation mentioned in the report and a progress report on their implementation in the overseas territories.**

The UK intends to have the Order made for all its Overseas Territories (except Bermuda, Cayman and Gibraltar, which are legislating locally, but may use the order as a model for their own legislation) in July. The UK shall send a copy of the Order to the CTC once it has been made.

  - **Please state whether the crimes referred to in the relevant international conventions and protocols relating to terrorism are all extraditable offences in bilateral extradition treaties.**

See the answer above to the question on sub-paragraph 3 (d).

[1] However it is important to note that the UK is made of three different law districts, namely (i) England and Wales, (ii) Scotland, and (iii) Northern Ireland. Whilst primary legislation that has been introduced specifically to implement treaty obligations will usually apply in all three law districts, aspects of substantive and procedural criminal law differ considerably in each. For the sake of brevity, this reply sets out the position in England and Wales. Implementation of the Conventions differs in a number of respects in Scotland and Northern Ireland.

Furthermore, legislation needs to be enacted in order to extend the conventions to the Crown Dependencies and Overseas Territories. The first five conventions detailed below have been extended to all of these territories; the process of extending the remaining seven is on-going.

- **Sub-paragraph 3 (f):**

  - **What is the remedy for a third country whose terrorists are by mistake or otherwise admitted into the UK?**

Third countries can request extradition. Extradition to and from the United Kingdom is governed by the Extradition Act 1989 ("the 1989 Act"). The UK has extradition arrangements with its designated Commonwealth partners (schedule 3 of the Act), the Hong Kong Special Administrative Region, the Republic of Ireland and foreign states that have been designated by an order in council (schedule 4 of the Act). The UK can make special extradition arrangements for requests from any state under section 15.

Requests to the United Kingdom can be made in two ways: a provisional arrest warrant, which is generally made through police channels as a matter of urgency, or a full order request, which is submitted through the diplomatic channel in advance of the arrest. These should consist of the particulars of the person whose return is requested, particulars of the offence of which he is accused or was convicted, a warrant or a duly authenticated copy of a warrant for his arrest issued in the requesting state, or for a provisional arrest, details of such a warrant, in the case of a person unlawfully at large after conviction of an offence, a certificate or a duly authenticated copy of a certificate of the conviction and the sentence, or for provisional arrest, details of the conviction.

Where a request is made for the provisional arrest of a fugitive, the fugitive will be arrested before an authority or an order to proceed (ATP/OTP) is signed. He is brought before the District Judge, who sets an initial period for the receipt of the formal extradition request and supporting documents, and the signing of the ATP/OTP by the Secretary of State. If the request is not received within this period, or if the requisite supporting documents are not supplied, the fugitive is released immediately. Where a full order request is made through the diplomatic channel, the ATP/OTP is signed before the fugitive is arrested by the Secretary of State.

At the resulting committal hearing, the request is considered. The District Judge must be satisfied that the documents have been correctly authenticated and certified, that the ATP/OTP relates to an extradition crime and that none of the prohibitions on return applies. If so, he is required to commit the fugitive to await the Secretary of State's decision as to whether to order the fugitive's return. In both Commonwealth and bilateral treaty cases, prima facie evidence is required at the committal hearing.

Following committal, the fugitive has 15 days to appeal against the District Judge's decision to commit him by applying to the Divisional Court for a writ of habeas corpus. If this is dismissed, the fugitive can appeal to the House of Lords, as can the requesting state.

Once all the stages before the courts have been completed, the case returns to the Secretary of State to make a decision within two months on whether to order surrender. If the Secretary of State is satisfied that there are no statutory bars to the fugitive's extradition, and there appears to be no other reason why extradition would be wrong, unjust or oppressive he may sign an order for the fugitive's return. The fugitive may apply for permission to seek judicial review of the Secretary of State's decision. If an application is made, the fugitive will not be surrendered while the judicial review proceedings are pending.

If evidence becomes available after the grant of refugee status, which indicates that the person concerned is a terrorist and had committed acts of terrorism prior to entry to the UK, action to cancel refugee status would be considered under the exclusion provisions in Article 1F of the 1951 Refugee Convention. If the exclusion criteria in Article 1F were satisfied, refugee status would be withdrawn prior to the person's being returned to stand trial.

Article 1F could be applied similarly if, in the course of considering an asylum application, evidence was available to indicate that the person had engaged in terrorist activity abroad. In either case removal to the extraditing country would be subject to there being no infringement of the individual's rights under the ECHR, in particular Article 3, and to all appeal rights in the United Kingdom being exhausted.

- **Sub-paragraph 3 (g):**

  - **Will the legislation on extradition to be introduced early in 2002 remove all geographical restrictions to the waiver of the political offence exception?**

The current position, under section 24 of the Extradition Act 1989, is that no offence to which section 1 of the Suppression of Terrorism Act 1978 applies shall be regarded as an offence of a political character. As amended by section 64 of the Terrorism Act 2000, the Extradition Act 1989 provides that, in relation to requests from certain countries, particular offences cannot be regarded as offences to which the political offence exception can apply. The offences cover a wide variety of serious crimes such as murder, manslaughter, rape, kidnapping, arson, various offences against the person, abduction, taking of hostages, explosives offences, firearms offences, offences against property, offences in relation to ships, aircraft, oil rigs and the channel tunnel together with attempts and conspiracy to commit such offences. These provisions apply world wide.

The new extradition legislation, which has been delayed slightly beyond the original timetable, will be consistent with this position.

- **Paragraph 4**

  - **The CTC would be grateful to know if the UK government has addressed any of the concerns in paragraph 4, as far as it concerns money laundering and narcotics.**

Drugs

The United Kingdom is at the forefront of international efforts to combat transnational organised crime and illicit drugs. Since September 11 we have enhanced our efforts to break the linkage between international terrorism and organised crime.

In particular the UK has established a Fund to provide technical assistance to countries that wish to combat Drugs and Crime. The budget of this Fund has increased by 37% in the last year. We have also significantly increased our financial contribution to the UNDCP in Vienna (the UK has consistently been amongst the five largest donors).

The UK has also taken a particularly active role in combating the drugs industry in Afghanistan which has in recent years been closely linked to terrorism. We have provided support to the Interim Administration for its crop eradication programme. We are also working with the Afghan government to

- create effective drugs law enforcement
- build the right institutions within Afghanistan to tackle addiction and provide treatment and demand reduction
- ensure that the peoples of districts previously dependent on opium cultivation are offered alternative livelihoods, not just in agriculture but also in other sectors.

The UK is a party to the three main drugs Conventions (1961,1971 and 1988) and lobbies for the widest possible adherence to these instruments which set the framework for international co-operation in this field. The UK was also one of the first countries to ratify the UN Convention against Transnational Crime (UNTOC) which provides for what is potentially a world wide framework for co-operation against organised crime. We have also organised a number of seminars to encourage its ratification by others.

Money Laundering

The United Kingdom is a leading member of the Financial Action Task Force and fully supports its 40 Recommendations on money laundering and 8 Special Recommendations on terrorist financing. Apart from a wide-ranging bilateral programme on technical assistance, the UK supports a number of multilateral initiatives.

- **The Caribbean Anti-money Laundering Programme (CALP) in partnership with the US and EU**
- **The ASEM anti-money laundering initiative in South East Asia in partnership with the EU and the Netherlands**
- **Caribbean Financial Action Task Force (CFATF) in partnership with the US, Canada, France, Netherlands, Spain and Mexico**
- **The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) in partnership with the Commonwealth Secretariat and the US**
- **The Council of Europe's PC-R-EV Committee**
- **The Caribbean Regional Technical Assistance Centre (CARTAC) in partnership with Canada, US, IMF, UNDP, Caribbean Development Bank, Inter-American Development Bank, and the World Bank**
- **The Financial Sector Reform and Strengthening Initiative (FIRST) in partnership with Canada, Switzerland, Sweden, Norway, the World Bank and the IMF**

Additionally, the UK has, on various occasions, provided technical experts to speak in international fora to sensitise the international community on the challenges in the battle against money laundering and terrorist financing.

- **Other matters:**

  - **Could the United Kingdom please provide an organisational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws regulations and other documents that are seen as contributing to compliance with the Resolution.**

The UK does not have an organisational chart as such, but hopes the following information is useful.

UK policy on international terrorism is co-ordinated by an inter-departmental committee of officials (TIDO(O)), which is chaired by the Foreign & Commonwealth Office. The Cabinet Office, the Home Office, the Ministry of Defence, HM Treasury, HM Customs and Excise, the Department for Trade and Industry, the Police Service and the Intelligence Agencies are all represented on the committee, which reports to Ministers as necessary. Co-ordination of policy towards the financial aspects of terrorism is carried out by a different official committee (TIDO(TF)), which is chaired by the Home Office, and whose membership includes: HM Treasury, the Financial Services Authority, and the Bank of England. The committee reports regularly to Ministers. In addition to these standing arrangements, in response to a particular threat or emergency, and subject to a decision by Ministers, the Cabinet Office would establish a permanently-manned crisis management centre (COBR) to co-ordinate the UK's response. The expertise of government departments, the intelligence agencies, the police, the military, scientific and other specialist advice, local authorities and the emergency services would be drawn on as appropriate.

The Home Secretary has ministerial responsibility for the police and Immigration Service, and counter-terrorist policy within the UK. The Home Office is therefore the focal point for the response to the terrorist threat, both through legislative measures and counter-terrorist contingency planning. As part of this response, the Home Office is responsible for a set of classified contingency plans that cover the full range of terrorist scenarios. These plans are well prepared, regularly tested, reviewed and updated in the light of changing domestic and international circumstances.

The Foreign and Commonwealth Office has responsibility for UK government policy on counter-terrorism issues in international and regional fora and for the mainstreaming of counter-terrorism co-operation and assistance in UK bilateral relations with other states.

HM Treasury is responsible in the UK for implementing financial measures against terrorists. SI 3365(2001) empowers the Chancellor of the Exchequer to freeze the assets of individuals and organisations where there are reasonable grounds to suspect they are involved in terrorist activities.

The assets freeze list is published on the Bank of England's website. The Bank maintains a circulation list of over 600 banks and trade associations to draw their attention to any changes in sanctions information published on the Bank's website.

The Department of Trade and Industry has responsibility for all aspects relating to export control matters including issues such as legislation and licensing policy.

HM Customs and Excise has the lead responsibility for detecting prohibited and restricted goods at import and export, including those goods that may be used by terrorists. Customs Officers are also Examining Officers under Anti-Terrorist legislation under which they provide information and intelligence to the lead counter terrorism agencies described above and have power to seize terrorist-linked cash anywhere in the UK.

United Nations S/2002/788

Security Council

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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/407).

The Counter-Terrorism Committee has received the attached supplementary report from Liechtenstein, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established
pursuant to resolution 1373 (2001)
concerning counter-terrorism

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Annex

Note verbale dated 24 June 2002 from the Permanent Mission of Liechtenstein to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Representative of the Principality of Liechtenstein to the United Nations presents her compliments to the Chairman of the Counter-Terrorism Committee established pursuant to resolution 1373 (2001) of the Security Council and has the honour to transmit a supplementary report on the implementation of resolution 1373 (2001) by Liechtenstein in response to the preliminary questions of the Committee (see enclosure).

The Permanent Representative of the Principality of Liechtenstein to the United Nations takes this opportunity to renew the assurances of her highest consideration to the Chairman of the Counter-Terrorism Committee established pursuant to resolution 1373 (2001) of the Security Council.

Enclosure

Introduction

1. Liechtenstein is pleased to continue its dialogue with the Counter-Terrorism Committee (CTC) on the implementation of Security Council resolution 1373 (2001). Liechtenstein continues to attach the highest importance to international cooperation in the fight against terrorism in all its forms and has significantly stepped up its efforts in this respect. The full implementation of Security Council resolution 1373 is a centerpiece of these efforts. Given its role as a financial center, Liechtenstein has pursued with determination the goal of ensuring that the financial center is not abused for the purpose of financing terrorism. Given the focus of resolution 1373 on the financing of terrorism, full and constructive cooperation with the CTC is of the highest importance. Liechtenstein has acquired significant expertise in areas relevant to the work of the CTC and is willing to share this expertise with other partners in the interest of achieving the common goal of eliminating terrorism in all its forms. In this respect, particular reference is to be made to the initiatives on benchmarking and best practices as outlined in the initial report and further developed since.

2. As stated on previous occasions, Liechtenstein firmly believes that the international community has an obligation to fully safeguard human rights in its fight against terrorism, as provided for under existing international law. While the CTC has been making important progress in its work on the implementation of Security Council resolution 1373, the human rights dimension of the matter warrants closer examination and increased attention from the international community.

3. The following information is provided in response to the letter of the Chairman of the Counter-Terrorism Committee (CTC) of 1 April and the preliminary questions contained therein. It is intended both to provide additional clarification to the CTC on issues contained in the first report of Liechtenstein (S/2001/1253) as well as information on relevant developments which have taken place since the submission of the first report.

   Sub-Para 1 (a):
   Have there already been convictions of natural or legal persons as listed in Art. 2 of the Due Diligence Act for "failure to report suspicion"? What are the penalties provided by law and what sentences, if any, have been handed down?

4. There have been no convictions so far for failure to report suspicion. However, punishment has been requested on the basis of suspicion pursuant to Article 15 of the Due Diligence Act in six proceedings during the years 2001 and 2002. The proceedings are pending before the Princely Court of Liechtenstein.

5. According to the Article 15(1)(e) of the Due Diligence Act, the failure to report suspicion is punishable by imprisonment of up to six months or by a fine of up to 360 per diem units.

Sub-Para 1 (b):
Please outline the legal framework which the Government of Liechtenstein intends to commission to comply fully with this Subparagraph?

6. The objective of the study commissioned by the Government of Liechtenstein was to review the existing legal framework and to identify and fill possible gaps in Liechtenstein legislation. On the basis of this study, the Government has recommended the following legislative measures:

- Definition of the new crime "Terrorist Association" (§ 278 b)
- Definition of the new crime "Terrorist Financing" (§278 d)
- Collective designation of terrorist crimes (§ 278 c)
- Extension of the definition of gang to "Criminal Association" (§ 278)

In accordance with the normal legislative process, the proposed legislative amendments will be circulated for consultation and will then be discussed by the Parliament on the basis of a draft law presented by the Government.

7. The Liechtenstein Criminal Code is modeled on the Austrian Criminal Code. The 2002 Draft Act on Amendment of the Criminal Code currently under discussion in Austria will also, to the extent possible, be incorporated into Liechtenstein law in order to maintain conformity of the two legal systems.

8. In addition to the definition of new crimes, modification and extension of existing definitions of crimes are recommended as follows:

- Taking terrorist associations into account with regard to confiscation of proceeds of crime and forfeiture (§§ 20, 20b)
- Extension of domestic jurisdiction according to § 64 of the Criminal Code to terrorist associations and terrorist financing
- Extension of the definition of money laundering (by expanding the list of predicate crimes and through the new § 278 d of the Criminal Code)

9. Furthermore, in the area of substantive criminal law in § 320 of the Criminal Code ("Support of a Party in a Foreign Armed Conflict"), the crime of "Arms Brokering" shall be included.

10. The objective of the proposed legislative measures is to improve the legal framework for combating terrorism in accordance especially with Security Council resolution 1373, as well as to implement the United Nations Convention against Transnational Organized Crime. Resulting amendments of organizational offenses are § 278 (Criminal Association), § 278 a (Criminal Organization), and § 278 b (Terrorist Association). Terrorist crimes are

defined in § 278 c. § 278 d punishes the intentional provision or collection of financial assets for committing terrorist acts.

Sub-Para 1(c):
According to the Report (Para 39), the Due Diligence Unit establishes the obligation of banks and other persons subject to this law "to report suspicions to the FIU, if the financial institution suspects its client to be connected to a criminal organisation or to have been involved in money laundering or in an act facilitating money laundering". After filing a Suspicious Transaction Report (STR) to the Financial Intelligence Unit (FIU) the affected assets are automatically blocked for a period of 10 working days upon submission of the STR (Para 45). Does the law authorise an immediate freezing of funds and other financial assets or economic resources following the submission of a STR by a foreign natural or legal person (including a foreign bank or a foreign government)?

Is the prosecutor or any other public authority in Liechtenstein authorised to order the freezing of funds etc. *proprio motu*, i.e. without having received prior notification from a bank etc, or upon request of foreign authorities?

11. Accounts are frozen by the investigating judge upon application of the prosecutor. Notification by a bank is not required. Accounts may always be frozen when a relevant suspicion arises in a proceeding. Reasons for suspicion may arise on the basis of investigations by the Liechtenstein police, a report of suspicion forwarded by the FIU, a foreign request for legal assistance, or any other information made available to the prosecutor's office.

Sub-Para 1 (d):
How does the financial tracking system ensure that funds received by associations are not diverted from their stated purposes to terrorist activities?

12. The scope of application of the Due Diligence Act is comprehensive: As soon as an association undertakes financial intermediary activities, it falls under the scope of the Due Diligence Act and must therefore fulfill all due diligence requirements. In addition, the general rules of the Criminal Code (Aiding and abetting a criminal association, aiding and abetting money laundering, etc.) always apply.

Sub-Para 2 (a):
Please outline the legal provisions prohibiting the trafficking and brokering of weapons to terrorists and their organizations.

Please outline the measures, both legislative and practical, preventing entities and individuals from recruiting, collecting funds or soliciting other forms of support for terrorist activities to be carried out inside or outside Liechtenstein, including in particular:

- the carrying out, within or from Liechtenstein, of recruiting, collecting of funds and soliciting of other forms of support from other countries; and
- deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organizations?

13. In this context, please refer to § 165 (Money Laundering), § 278 a (Criminal Organization), § 279 (Armed Group), § 280 (Accumulation of Arms) and § 320 (Support of a Party in a Foreign Armed Conflict) of the Criminal Code.

14. In addition, this question is dealt with in §§ 62 – 64 of the Criminal Code. According to § 65(1) of the Criminal Code, criminal offenses committed abroad are punishable in Liechtenstein, if they are committed by a Liechtenstein citizen or a foreign citizen apprehended in Liechtenstein who may not be extradited to a foreign country for reasons other than the manner or nature of the offense. According to Article 11 of the Liechtenstein Law on Mutual Legal Assistance, extradition for prosecution is permissible for all offenses committed intentionally that are punishable by at least one year imprisonment according to the law of the requesting State and according to the law of Liechtenstein. In principle, this enables extradition to all States for all possible offenses connected to terrorism, regardless of the existence of bilateral treaties.

    Please also refer to Article 2(2) of the Due Diligence Act, according to which every person accepting foreign assets in a professional capacity is subject to the Due Diligence Act and must therefore fulfill all due diligence requirements contained in the Act, in particular the notification requirement and the requirement to report suspicious activities according to Article 9 of the Due Diligence Act.

    Sub-Para 2 (f):
    According to Art. 3 (1) of Liechtenstein's Legal assistance Law, a foreign request for mutual legal assistance may only be complied with if it can be guaranteed that the State making the request would comply with an identical request made by Liechtenstein (the principle of mutuality). According to Art. 3 (3) of the same law, if compliance with the principle of mutuality is doubtful, the Ministry of Justice is to be asked for advice. Please describe the practice of the Ministry of Justice in giving such advice, and provide an assessment on whether and how sub-paragraph 2 (f) of the Resolution will affect such advice in matters relating to terrorist acts.

    What is the legal timeframe within which a request for judicial assistance in criminal investigations or criminal proceedings relating to the financing or support of terrorist acts is required to be met, and how long does it actually take in practice to implement such a request?

15. No cases are known in which the Ministry of Justice has in the past been called upon to give advice concerning doubtful mutuality. Even when the old Law on Mutual Legal Assistance of 1993 was applied, only very few cases arose in which appellants claimed lack of mutuality on appeal. The majority of crimes committed abroad in these cases could be subsumed under crimes punishable in Liechtenstein, enabling mutual legal assistance to be rendered.

16. Subparagraph 2(f) can be fulfilled without reservations, since any foreign terrorist acts are also subject to judicial punishment in Liechtenstein. Accordingly, nothing stands in the way of granting legal assistance.

17. The duration of proceedings for international legal assistance in criminal matters may vary considerably from case to case. Liechtenstein authorities have no influence on whether and how many appeals are lodged. Liechtenstein authorities have been able to process previous requests for legal assistance relating to terrorist activities positively and fully within a few days or weeks. If all possible appeals are lodged against every judicial decision, the proceeding may take longer (e.g., a few months); in cases relating to terrorist activities, however, all Liechtenstein authorities are committed to processing requests without delay.

Sub-Para2(g):
Could Liechtenstein please provide the CTC with information on the mechanism for inter-agency cooperation between the authorities responsible for narcotics control, financial tracking and security with particular regard to the border controls preventing the movement of terrorists?

18. The Coordination Group on Terrorist Financing (established by decision of the Government on 31 October 2001), under the leadership of the FIU, coordinates cooperation among all primarily affected authorities in connection with the fight against terrorism and the financing of terrorism. The objective of the regularly convened meetings is to exchange information and especially to coordinate specific cases involving multiple authorities (see enclosed flow chart). In particular in the areas of narcotics and border control, the Liechtenstein police is the lead authority. The police has the necessary contacts at its disposal at the personal and technical levels (access to databases) in order to obtain requisite information without delay. The close cooperation between the Liechtenstein police and the FIU in the area of financial tracking is ensured by the agreement of 8 May 2001 between the police and the FIU governing the manner, scope, and speed of information exchange, as well as by regular contact with the liaison officer of the FIU to the police.

Sub-Para 3 (b):
According to Paragraph 36 of the report, the "new law on mutual legal assistance has made legal assistance pursuant to requests by foreign authorities easier and more practical"; in particular, the new law offers only four instead of, as previously, twelve means of appeal against a decision to grant legal assistance. Please explain what the four means of appeal are. To what extent will this impact upon the time it takes to provide legal assistance?

19. The new Law on Mutual Legal Assistance eliminates all means of appeal at the administrative level without substitute, with respect to both admissibility and transfer. The Ministry of Justice has been designated as the sole central authority, replacing the Legal

Service of the Government as the administrative authority of first instance. Decisions of the Ministry of Justice are not subject to appeal. The stages of appeal have been radically limited and are now only permissible in judicial proceedings. Decisions of the Princely Court (first instance) may be appealed to the Superior Court (second instance). If the second instance upholds the decision of the first instance, the decision may further be appealed to the Constitutional Court, if the appellant claims that the judicial decision has violated constitutionally guaranteed rights. Regarding the duration of the proceedings, please refer to the information submitted under subparagraph 2(f).

Sub-Para 3(c):
In Paragraphs 58 and 59 of the report, Liechtenstein stresses the importance of bilateral agreements on mutual legal assistance (It is understood that, in Liechtenstein, this term includes extradition). Please provide a list of the relevant agreements which Liechtenstein has concluded.

20. As paragraph 58 of the initial Liechtenstein report indicates, cooperation in the area of mutual legal assistance is rendered particularly on the basis of the Law on Mutual Legal Assistance, which replaces bilateral agreements or treaties if they do not exist. It should again be emphasized that the Liechtenstein Law on Mutual Legal Assistance enables authorities to render mutual legal assistance also to States with which Liechtenstein has concluded neither bilateral nor multilateral legal assistance agreements.

21. With regard to international legal agreements with other States, Liechtenstein foreign policy has in the past focused primarily on the conclusion of multilateral treaties developed in the framework of international organizations of which Liechtenstein is a member, particularly the Council of Europe and the United Nations. This has enabled cooperation with a great number of other States to be rendered on a uniform basis of international treaties. This approach has also been chosen in the area of mutual legal assistance. Bilateral agreements exceeding the scope of mutual legal assistance contained in multilateral treaties have been concluded between Liechtenstein and Austria. Negotiations with the United States are also underway concerning the conclusion of a bilateral mutual legal assistance treaty. With regard to the European Convention on Extradition, two supplemental agreements with the Netherlands and the United Kingdom should be mentioned, with which the territorial application of the Convention was extended. The following bilateral treaties are relevant (see enclosed full list):

- Treaty of 4 June 1982 between the Principality of Liechtenstein and the Republic of Austria supplementing the European Convention on Mutual Legal Assistance in Criminal Matters of 20 April 1959 and facilitating its application (LGBl 1995 Nr. 223)
- Treaty of 4 June 1982 between the Principality of Liechtenstein and the Republic of Austria supplementing the European Convention on Extradition of 13 December 1957 and facilitating its application (LGBl 1983 Nr. 40)

- Agreement between the Principality of Liechtenstein and the Kingdom of the Netherlands concerning the extension of the European Convention on Extradition of 13 December 1957 to the Netherlands Antilles and Aruba (LGBl 1995 Nr. 224)
- Agreement between the Principality of Liechtenstein and the United Kingdom concerning the extension of the European Convention on Extradition of 13 December 1957 to the dependent territories of the United Kingdom (LGBl 1997 Nr. 62)

22. In addition, an agreement in the form of an exchange of notes (of 17 February/29 May 1958) was concluded between the Principality of Liechtenstein and the Federal Republic of Germany allowing direct transactions in civil and criminal matters between the justice authorities of the two countries.

23. The two following mutual legal assistance treaties are of almost no remaining significance in practice:

- Extradition treaty of 22 May 1936 between the Principality of Liechtenstein and the United States of America (LGBl 1937 Nr. 11)
- Extradition treaty of 5 August 1936 between the Principality of Liechtenstein and the Kingdom of Belgium (LGBl 1938 Nr. 3)

24. On the level of administrative assistance, the law governing the FIU (in force since 8 May 2002, see enclosure) enables the FIU to conclude bilateral Memoranda of Understanding (MOUs) with foreign FIUs. The FIU has concluded such an MOU with the FIU of Belgium; the elaboration of further MOUs with Switzerland, Monaco, Panama, and France is underway and should be concluded in the near future.

Sub-Para 3 (d):
Please provide a progress report on the ratification of those relevant international conventions and protocols relating to terrorism which Liechtenstein has not yet ratified or acceded to.

25. Draft acts of ratification of the following conventions have been presented to the Government for approval and subsequent referral to the Parliament:

- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997
- Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1998

26. It is planned that all these conventions will be approved by the Government in time for referral to the Parliament for ratification in the Parliament's first meeting after the summer break (11-13 September 2002).

27. With regard to the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999, the Government of Liechtenstein intends to present to the Parliament the amendments to domestic legislation necessary for full implementation of the Convention before or simultaneously with the draft act of ratification of the Convention. This shall ensure that Liechtenstein can fulfill all obligations assumed by States Parties upon entry into force for Liechtenstein. Preparations in this regard are underway. The planned modifications of the Liechtenstein legal framework are intended to be circulated to interested parties for consultation. Upon evaluation of the results of the consultation, the Government and the Parliament should be able to discuss the draft law in the second half of 2002. The goal remains ratification by the end of 2002 at the latest.

Sub-Para 3 (e):
Have the crimes set forth in the relevant international legal instruments relating to terrorism to which Liechtenstein is a party been included as extraditable offences in the bilateral treaties which Liechtenstein has concluded with other countries, as provided for in those instruments?

Please elaborate on the practical implications of Liechtenstein's interpretative declarations to the Convention on the Prevention and Punishment of Crimes against International Protected Persons, including Diplomatic Agents and to the International Convention against Taking of Hostages. Please indicate whether they restrict in any way the full implementation of these two international conventions.

28. The bilateral agreements listed under subparagraph 3(c) supplement existing multilateral treaties. The provisions of the multilateral agreements therefore provide the basis for the bilateral agreements. This is particularly true with respect to the definitions of crimes encompassed by the treaties.

29. Liechtenstein made the two interpretive declarations on the grounds that the two conventions do not refer to applicable limitations in domestic law regarding the information exchange contemplated by the conventions. Liechtenstein law does not allow information exchange regarding pure tax offenses. For reasons of legal clarity, Liechtenstein therefore made the following declaration when ratifying the two conventions: "The Principality of Liechtenstein construes articles 4 and 5, paragraph 1 of the Convention to mean that the Principality of Liechtenstein undertakes to fulfil the obligations contained therein under the conditions laid down in its domestic legislation."

30. The lack of reference to domestic law has apparently also caused problems for other States; this becomes apparent in the inclusion of the reference in the corresponding provision of the International Convention for the Suppression of Terrorist Bombings concluded at a later stage. According to Article 15(b) of this convention, "States Parties shall cooperate in the prevention of the offences in article 2, particularly by exchanging accurate and verified information in accordance with their national law, and coordinating administrative and

other measures taken as appropriate to prevent the commission of offences as set forth in article 2."

31. In practice, the two declarations have no influence on the expeditious provision of legal assistance. If the request does not exclusively concern a pure tax offence, and there is therefore a connection with a crime covered by the conventions, the conventions are applied fully.

Sub-Para 3 (g):

According to paragraphs 53 and 72 of Liechtenstein's report, "Article 14 of the Liechtenstein Law on mutual legal assistance provides that extradition is permissible for criminal acts based on political motivations or goals, if the criminal character outweighs the political character, taking into consideration all circumstances of the individual case". Please clarify the legal effect of this provision of the Liechtenstein law on mutual legal assistance in view of sub-para 3 (g) of the Resolution which requires States to ensure that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists.

32. If the claim is made on appeal that extradition of the accused person present in Liechtenstein is impermissible for political reasons, the courts shall decide the matter. Such appeals have been made only very rarely in the past and are unknown to date under the new Law on Mutual Legal Assistance. In the past, courts have applied the same principle as in other countries (e.g., Switzerland), according to which relative and absolute political offenses are to be distinguished. Only in cases of absolute political offenses will no legal assistance be rendered. No such cases have ever occurred. An appeal concerning a political offense would not be successful in the case of terrorist acts, since such acts can by definition never be an absolute political offense. Therefore, legal assistance would be rendered.

Sub-Para 4:
Has Liechtenstein addressed any of the concerns expressed in paragraph 4 of the resolution?

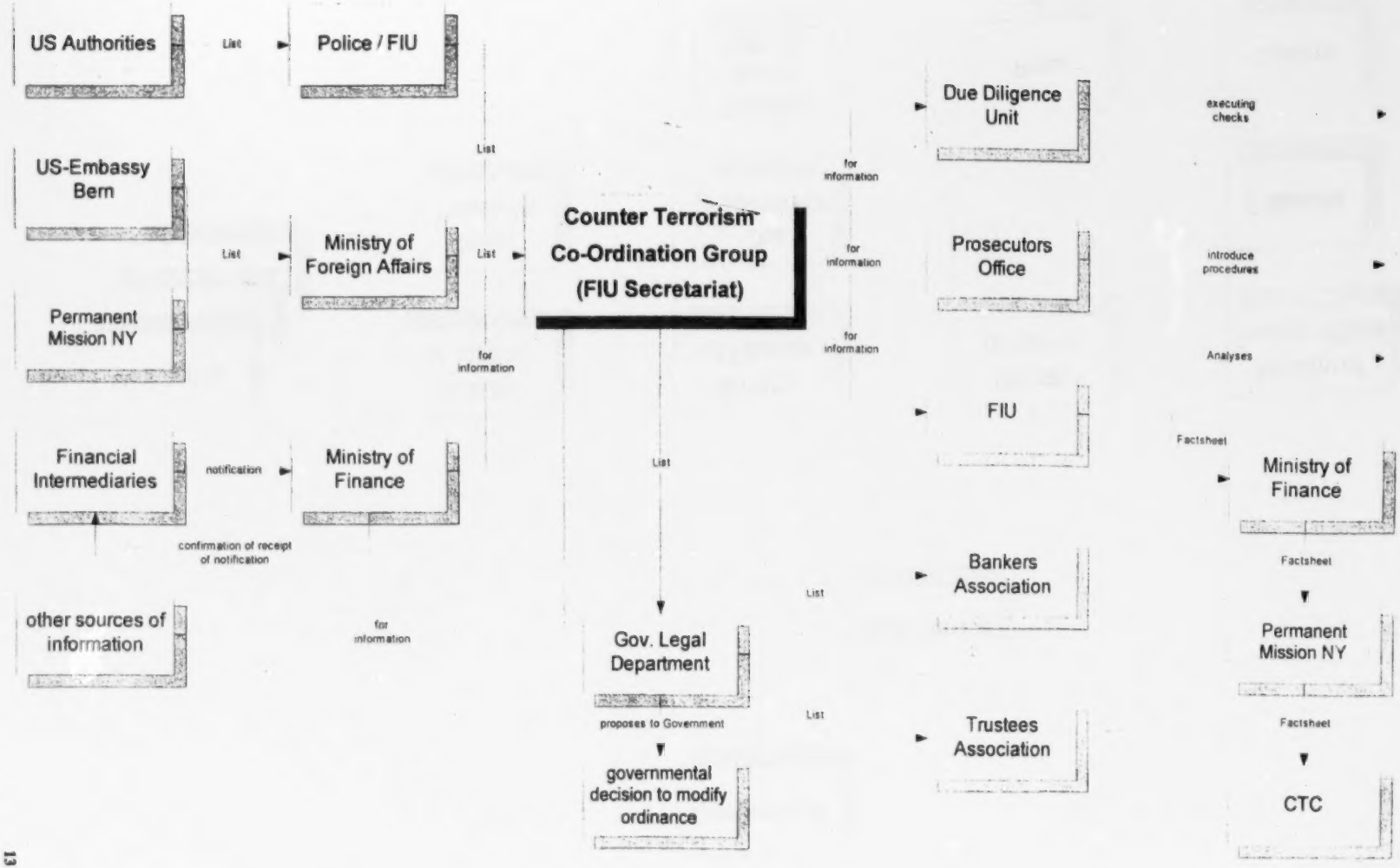
Could Liechtenstein please provide an organisational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contribution to compliance with the resolution.

33. Liechtenstein has itself taken on the task of fighting money laundering and organized crime preventatively, in order to keep its financial center clean and to deny a financial basis to international terrorism. The requisite measures have largely been established; it is however imperative to adapt them to the ongoing needs and always to commit to the highest standards. International cooperation is indispensable for Liechtenstein in combating terrorism, money laundering, and organized crime. An example of Liechtenstein's engagement is its organization of the 4th Typologies Seminar of the PC-R-EV (Council of Europe, FATF-Style Regional Body) from 9 to 11 April 2002, in which over 80 experts from around 50 different European States as well as the United States of America participated. An exchange of best practices took place in the areas of combating money laundering and financing of terrorism.

34. In the framework of strengthened regional cooperation, Liechtenstein has concluded a treaty with its neighboring countries Switzerland and Austria which entered into force on 1 July 2001 (LGBl 2002 Nr. 122). The objective of the treaty is to cooperate for the purpose of fulfilling mutual security interests, to further develop close cooperation among police and border police, and to counter transboundary threats and international crime effectively by means of a cooperative security system.

See enclosures for the second part of the question.

Organisational Chart Counter Terrorism Co-Ordination Group



Government
Legal Service
Ministry of Foreign Affairs
Embassies
Customs
Ministry of Interior
Police
Ministry of Finance
Due Diligence Unit
Financial Service Authority
Financial Intelligence Unit
Ministry of Justice
Public Prosecutor
Ministeries

United Nations S/2002/789

Security Council

Distr.: General
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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/446).

The Counter-Terrorism Committee has received the attached supplementary report from Denmark, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established
pursuant to resolution 1373 (2001)
concerning counter-terrorism

02-49451 (E) 010802

Annex

Letter dated 8 July 2002 from the Permanent Representative of Denmark to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Upon instructions from my Government, and with reference to your letter of 15 April 2002, I have the honour to forward herewith a supplementary report dated 8 July 2002 from the Government of Denmark pursuant to paragraph 6 of resolution 1373 (2001).

(*Signed*) Ellen Margrethe **Løj**
Ambassador
Permanent Representative of Denmark to the United Nations

Enclosure

Denmark: supplementary report dated 8 July 2002 submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001)

Introduction

On 27 December 2001, Denmark submitted its report pursuant to paragraph 6 of Security Council Resolution 1373 (2001) to the Committee established by the Security Council – the Counter Terrorism Committee. In a letter dated 15 April 2002, the Counter Terrorism Committee informed that it had considered the report carefully and that it had some preliminary comments/questions. The following supplementary report constitues answers to the preliminary comments/questions of the CTC.

As the original report, the report covers actions undertaken by the Danish Government as well as actions taken within the framework of the European Union.

Sub-paragraph 1 (a)

- **Could Denmark please provide an outline of the relevant provisions of the Bills introducing legislative amendments in regard to terrorism and a progress report on their enactment and implementation?**

The Anti-Terrorism Act of the Ministry of Justice that was adopted by the Parliament on May 31 2002, includes the following main elements:

- Insertion of a special section on terrorism in the Danish Criminal Code (straffeloven). A large number of the offences typically designated terrorist acts are today punishable under specific provisions of the Criminal Code. Thus, for example, homicide is punishable under section 237 of the Criminal Code regardless of the offender's motive for the act. The Government wanted to signal more clearly that terrorism in all its forms is unacceptable in a democratic society. Therefore a terrorism section defining the concept of terrorism has been inserted into the Criminal Code. The provision comprises very serious offences committed to disturb the established order and intimidate the population, and the maximum penalty is fixed at life imprisonment. The provision is to implement the EU Framework Decision on combating terrorism.

- Insertion of a special section of financing of terrorism, according to which it is an offence, to a wider extent than today, to provide or arrange for financial support to a terrorist organisation or otherwise to contribute to the promotion of its criminal activities. The maximum penalty is fixed at 10 years imprisonment.

- An amendment to section 77 (a) of the Criminal Code to make it possible to carry out confiscation of money and other property (and not just "objects"), which it is feared will be applied to commit crimes. And at the same time an amendment to sections 802 and 803 of the Danish Administration of Justice Act (retsplejeloven) on seizure to make it possible to seize money and other property (and not just objects) for the purpose of confiscation under section 77 (a) of the Criminal Code. This amendment is necessary as a consequence of the proposed extension of section 77 (a) of the Criminal Code.

- Amendments to the rules on criminal responsibility for legal persons (companies, etc.), repealing the requirement that a violation of the Criminal Code must have been committed to obtain a gain for the legal person. It is further specified that legal persons can be punished for attempted offences to the same extent as natural persons. Finally, it is specified that the period of limitation for the criminal responsibility of legal persons must follow the period of limitation for natural persons. Today, the period of limitation for legal persons is always two years.

- An extension to the provision on the seizing of aircraft and ships in section 183 (a) to include other means of public or goods transport as well.

- Aggravated violations of the Arms Act (våbenloven) are serious offences that may be connected with terrorism. To make it possible to impose heavier sentences for particularly aggravated violations, the maximum penalty in section 192 a of the Criminal Code in respect of aggravated violations of the Arms Act is increased from four years' to six years' imprisonment.

- A clarification of section 192 a of the Criminal Code to make it appear expressly that the development of chemical and biological weapons or research to that effect falls within the provision. A similar clarification has been made of section 5 of the Arms Act.

- A new provision on non-proliferation of weapons of mass destruction, etc. has been inserted in Part 13 of the Criminal Code with a maximum penalty of imprisonment for up to six years.

- In order to improve the investigative possibilities of the police, insertion of a provision into section 786 of the Administration of Justice Act, according to which telecommunications companies and Internet service providers have to record and store ("log") for one year the information on tele and Internet communications of relevance to police invasion of the secrecy of communications, etc. The recording and storage only concern traffic data and not the actual contents of the communication. Furthermore, only the companies have a duty to record and store the traffic data in question. The rule does not involve extended police access to these data. The detailed (technical) rules on this logging will be prescribed by the Minister of Justice following negotiation with the Minister of Science, Technology and Innovation and otherwise following a dialogue with the industry.

- Moreover, the Act contains improvements of the investigative possibilities of the police on several points where, in practice, difficulties arise in connection with the actual implementation of invasion of the secrecy of communications.

  Thus, a provision has been inserted into the Administration of Justice Act authorising the Minister of Justice to prescribe rules on the practical assistance by the telecommunications providers to the police in connection with invasion of the secrecy of communications following negotiation with the Minister of Science, Technology and Innovation. The provision replaces a corresponding, non-utilised enabling provision in the telecommunications legislation. Also on this point it is assumed that the industry will be involved in connection with the drafting of the rules.

  The purpose of this part of the Act is to ensure rapid and effective access for the police to the information to be provided by invasion of the secrecy of communications.

- The Act further includes rules on the access for the police to the nation-wide directory inquiry service, which contains name and address data concerning all telephone subscribers listed by name in Denmark, including unlisted telephone numbers, regardless of the subscriber's telecommunications provider.

- Under the previous rules of the Administration of Justice Act, the police could already acquaint themselves with communications between computers by means of interception, and at a search the police could also acquaint themselves with all the records of a computer, including electronic messages received and copies of messages that have been sent. However, for technical reasons and owing to the risk of discovery of the measures, it was not possible for the police in all cases to exploit their existing right to acquaint themselves with electronic messages and data in a computer. For that reason a new provision (section 791 b) has been inserted into the Administration of Justice Act, according to which, in cases of very serious offences, the police can obtain a court warrant allowing them to capture data in an information system not available to the public by means of software or other equipment (data capture) without being present at the location where an information system (*i.e.*, a computer or another data system) is used. This will make it possible to permit

measures whereby, by means of a so-called "sniffer program", the police will receive a copy of all data input by the data system user.

- The Act also includes an amendment of section 799 of the Administration of Justice Act to provide a right to secret searches in cases of aggravated arson, explosion of bombs, hijacking and addition of toxic substances to the water supply or foodstuffs, etc. The right to keep information on searches in such cases secret may, for example, be of crucial importance where the offence were presumably committed by several unknown co-offenders, and where it is therefore necessary to keep the investigation secret to be able to identify and arrest these individuals.

- At the same time the Act contains an amendment of section 799 of the Administration of Justice Act to authorise the court to allow the police, with only one warrant, to carry out several individual searches without immediate notification (repeated secret searches) within a period not exceeding four weeks. This may be necessary where, for example, no drugs or weapons were found at the first search, but where it is still suspected that delivery on the location in question will take place within a short time, or where a search has had to be interrupted owing to the risk of discovery of the investigation. The court has to fix the number of searches in connection with the search warrant. In special cases the court may decide, however, that the police may carry out an indeterminate number of searches within the specified period (not exceeding four weeks).

- In addition, the Act includes an amendment of section 806 of the Administration of Justice Act, according to which it becomes possible to order a third party to surrender documents, etc. (discovery) without prior warrant in cases where the purpose will be forfeited if a warrant has to be awaited. This might, for example, be thought relevant in a situation where the police need prompt surrender of the passenger list of an airline company.

- Furthermore, the Act includes an amendment of the prohibition of the Extradition Act (udleveringsloven) against extradition of Danish nationals. The purpose of this amendment is to provide authority for the extradition of Danish nationals for prosecution abroad when certain conditions are satisfied. Either the offence must be serious (a maximum penalty of more than four years' imprisonment) or the offender must have lived in the country requesting extradition for at least two years before the offence. The reason for the amendment is that, as a general rule, prosecution should be carried out where the offence has been committed, since it often entails great – and some times insurmountable – difficulties in criminal proceedings in Denmark to produce evidence of offences committed abroad when witnesses and/or evidence are not present in Denmark. The Act will thus improve the possibilities of making persons accountable in the state in which the offence was committed. The amendment does *not* concern the proposal for framework decision on a European arrest warrant in the European Union.

- The Act also includes an amendment of section 5(3) of the Extradition Act, according to which extradition for an act comprised by Article 1 or 2 of the European Convention for the Suppression of Terrorism cannot be refused with reference to the prohibition against extradition for political offences at extradition to an EU Member State. The exception from the prohibition on extradition for political offences has been extended to include all requests for extradition for acts comprised by Article 1 or 2 of the European Convention for the Suppression of Terrorism, whether or not the extradition concerns extradition to an EU Member State or to another (European) State that has ratified the Convention. Nor is it possible to refuse requests for extradition in respect of counts comprised by the International Convention for the Suppression of the Financing of Terrorism with reference to the prohibition against extradition for political offences.

- **Please provide a progress report on the implementation of the Bill in Greenland and the Faroe Islands.**

The amendments of the Criminal Code do not apply to the Faroe Islands, but the amendments may enter into force by a Royal decree. Before the coming into force of the amendments, the Faroe Home Rule must have the amendments presented for an opinion. It is the intention of the Ministry of Justice in the nearby future together with the Faroe Home

Rule to take a thorough look at the criminal rules applying to the Faroe Islands in order to make sure that there are no loopholes as far as terrorism is concerned in the Faroese regulation.

Greenland has its own criminal code and therefore the amendments will not be put into force in Greenland. However, an existing Commission on Greenland's Judicial System has the task to carry out a fundamental revision of the judicial system in Greenland and to draft a revised version of the special Criminal Code and the special Administration of Justice Act applying in Greenland. The Commission is expected to hold its last meeting in the second half of 2002. The report is expected to be submitted in 2003. When the revised version of the special Criminal Code is available, the Ministry of Justice will examine it in order to ensure that all the obligations of UNSCR 1373 (2001) are fulfilled.

Sub-paragraph 1 (b)

- **Do the new provisions regarding the criminalisation of the financing of terrorism also include the criminalisation of the wilful collection of funds in order to carry out terrorist acts?**

Yes.

The new section 114 a of the Danish Criminal Code criminalizes

- direct or indirect financial support of
- direct or indirect provision or collecting of
- direct or indirect placing of money or other assets or financial services at the disposal of

a terrorist group or an individual, who commits or intends to commit terrorist acts.

The maximum penalty is 10 years imprisonment.

- **Please outline Section 23 of the Criminal Code.**

Section 23 of the Criminal Code:

"(1) The penalty in respect of an offence shall apply to any person who has contributed to the execution of the wrongful act by instigation, advice or action. The punishment may be reduced for any person who has only intended to give assistance of minor importance, or to strengthen an intent already resolved and if the offence has not been completed or an intended assistance has failed.

(2) The punishment may similarly be reduced for a person who has contributed to the breach of a duty in a special relationship in which he himself had no part.

(3) Unless otherwise provided, the penalty for participation in offences that are not punishable more severely than with simple detention may be remitted where the accomplice only intended to give assistance of minor importance or to strengthen an intention already existing, or where his complicity is due to negligence."

Sub-paragraph 1 (c)

- **The report states that "amendments are proposed to the Money Laundering Act, so that the freezing or suspension of transactions also applies where the suspicion of the financial institution relates to the financing of terrorism". For how long is it proposed that the financial institution will be able to suspend a suspicious transaction?**

If the financial institution suspects, that a transaction has the purpose of financing terrorism, the institution has to freeze or suspend the transaction and report the suspicion to the Public Prosecutor for Serious Economic Crime. The transaction is hereafter retained until the Public Prosecutor endorses it or seizes it.

- **Please outline the relevant provisions of the amended Money Laundering Act.**

The relevant provision of the amended Danish Money Laundering Act is Section 10 a: "If there is suspicion that a transaction is or has been related to the financing of terrorism then the enterprise shall carry out a more definite investigation. If the suspicion cannot be disproved the Public Prosecutor for Serious Economic Crimes shall be informed. Transactions from the account or person in question may only be carried out after agreement with the Public Prosecutor for Serious Economic Crimes. As soon as possible and no later than the end of the following banking day after the receipt of the notification, the Public Prosecutor for Serious Economic Crimes shall decide whether a seizure shall be undertaken."

Furthermore an amendment to the Customs law introduces declaration requirement at import and export, when carrying cash over Euro 15,000. If cash exceeding more than Euro 15.000 is detected it can be detained by Customs if it is suspected that the cash originates from or is intended for criminal activity.

- **Are there any legal provisions allowing the freezing, on request of another country, of funds or other financial assets or economic resources held in Denmark's financial institutions, belonging to foreigners suspected of supporting terrorist acts?**

Reference is made to the answer to Operative Paragraph 2 (f) in the original Report with regard to mutual assistance. As mentioned in the answer, there is no specific Danish legislation on mutual legal assistance in criminal matters. However, the lack of such legislation has never been seen as an obstacle to Danish authorities providing legal assistance to other countries. Thus Danish authorities can comply with a request for freezing of assets/seizure if freezing of assets/seizure could be carried out in a similar national case.

- **The report states that the concept of "freezing does not exist in Danish criminal law. As the European Regulations on freezing funds of designated persons and entities have direct force in Denmark, how are these Regulations given effect in domestic law?**

According to the EC-treaty article 249 "A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States."

Regulations thus have direct effect within the member states. It is therefore not necessary to adopt implementation measures in order to give effect to EC-regulations.

The obligation to "freeze" funds of designated persons and entities follows directly from the Council Regulation 2580 adopted on 27 December 2001. As the regulations have direct effect no implementation measures have been needed in Danish law.

Sub-paragraph 1 (d)

- **Are natural or legal persons other than banks (such as lawyers, notaries and other intermediaries) required to report suspicious transactions to the public authorities? If so, what penalties apply if such persons omit to report, either wilfully or by negligence?**

In the amended Danish Money Laundering Act the scope has been extended in accordance with the amended EU-directive 2001/97/EC. Thus all the mentioned advisors and intermediaries are required to report suspicious transactions to the public Authorities.

The penalty if such natural or legal persons omit to report is a fine according to the amended Money Laundering Act.

- **Does Denmark have any provisions for regulating alternative money transfer agencies?**

In the amended Danish Money Laundering Act alternative money transfer agencies are regulated in the Section 1, Subsection 3 and 4. From these provisions it appears that alternative money transfers agencies have to register at the Public Prosecutor for Serious Economic Crime when starting carrying out its business.

- **What preventive control and surveillance measures has Denmark put in place to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted from their stated purposes?**

In Denmark financing of terrorism has been criminalised according to the amended Criminal Code and Money Laundering Act. The police thus investigate any suspicion. Furthermore it is prohibited to create associations or funds with an illegal purpose; this derives from basic Danish principle of law.

Sub-paragraph 2 (a):

- **Please explain what particular provisions of the Act on Weapons and Explosives contribute to the prohibition of the supply of weapons of terrorists.**

According to Section 6 of the Danish Weapons Act (Consolidated Act. No. 67 of 26th. January 2000) export of weapons is in principle prohibited, but individual export licences may be granted after a case-by-case evaluation.

In general, the Danish policy on export of arms is to refuse export licences to countries involved in military events or to areas in which conditions are so troubled or unstable that there is a risk they will develop into armed conflicts; including civil wars or armed oppression of sections of the population. Furthermore, export licences are refused for countries of which an international embargo – e.g. a U.N. or EU-embargo – has been imposed. In addition, the EU common code of conduct is enforced.

Sub-paragraph 2 (b)

- **Please provide a list of countries with which Denmark has concluded bilateral treaties regarding co-operation in combating terrorism.**

The Danish Civil Security Service works in close cooperation with foreign police, security and intelligence services. The bilateral cooperation is carried out informally and is not set down in treaties or agreements. For the sake of the confidentiality of the work it is not possible to tell exactly which countries the Civil Security Service cooperates with.

Sub-paragraph 2 (c)

- **Do the contemplated adjustments of the Alien Act, as referred to in the report, also cover the denial of safe haven to persons who commit terrorist acts outside Denmark not directly causing a danger to the security or health of the Danish population? Please elaborate on this and provide a progress report on the action taken in this regard.**

The Danish Parliament has, on 31 May 2002, adopted the bill amending the Aliens Act referred to in the report. The new rules entered into force on 8 June 2002.

After the adoption of the bill amending the Aliens Act, it follows from Section 25 that an alien can be administratively expelled if:

1) the person in question is considered as a danger to national security or
2) the person in question is considered as a danger to the public order, security or health of the Danish population.

As regards aliens falling under category 2), they can – according to the explanatory remarks to the bill – also be expelled in situations where the danger primarily is targeted towards the public order, security or health of another country if the danger in a more indirect manner implies a danger to the public order, security or health of the Danish population.

Sub-paragraph 2 (e)

- **Do the amendments to the Criminal Code regarding criminalisation of terrorism cover the provisions referred to in the EU-Framework Decision on combatting terrorism, or are further legislative amendments planned to implement that Decision?**

With the amendments to the Criminal Code regarding criminalisation of terrorism the Danish legislation fully complies with the EU-Framework Decision on combating terrorism. The Danish Government has thereby withdrawn its parliamentary reservation to the Decision. The Decision was finally adopted by the EU on Thursday 13 June 2002.

Sub-paragraph 2 (f)

- **Has Denmark concluded any bilateral treaties on mutual legal assistance in criminal matters with countries other than the EU member states and the Nordic countries? Please provide a list of any such country.**

Denmark has also ratified the European Convention of 20 April 1959 on mutual legal assistance in criminal matters and the Additional Protocol to the Convention. Furthermore, Denmark has signed the Second Additional Protocol to the Convention.

Sub-paragraph 2 (g)

- **Could Denmark please provide information on the mechanism for interagency co-operation between the authorities responsible for narcotics control, financial tracking and security with particular regard to border controls preventing the movements of terrorists?**

The police in Denmark, The Faroes and Greenland, including the National Security Service (the PET), constitute one national force employed directly by the State. Only the police and prosecution services have the authority to investigate offences, including drug offences, financial tracking and security. Accordingly, the customs authorities must notify the police and prosecution services of all drugs detected at border points.

The need for coordination between the independent law enforcement bodies is therefore somewhat limited in comparison with other countries where several national and local authorities can have independent investigative jurisdiction.

In September 2000 a Steering Group was set up with the participation of the National Commissioner of Police and the Director of Public Prosecutions as well as other high level representatives of the police and public prosecution. A major task of the Steering Group is to co-ordinate efforts to combat organised crime. The Customs and Tax Administration participate in the Steering Group on an ad-hoc basis. In practice, Danish Police monitors organised and other complex types of crime. Danish Police collects information from a variety of different sources, e.g. open sources, international law enforcement co-operation partners and from the different levels of the police force. The information is analysed, collated and evaluated by the National Commissioner of Police. Essential to this system is the close day-to-day contact between local, regional and national police and the National Security Service as well as strategic level.

In the case that a presumed terrorist is expected to cross a Danish border, the National Security Service can relay this information to the police at the relevant border post. Furthermore, the National Security Service can institute a search for a presumed terrorist through the Danish Criminal Register. To the extent that this is in accordance with national legislation, the National Security Service also has the option of requesting a search for a presumed

terrorist in the Schengen Information System via the National Police, as provided for in article 99 (3) of the Schengen Convention.

Sub-paragraph 3 (d)

- **Please explain how relevant international conventions and protocols relating to terrorism to which Denmark is a party have been incorporated into its domestic law.**

Before acceding or ratifying a convention or another international agreement the Government of Denmark considers whether amendments of the national legislation are necessary in order to fulfill the obligations deriving from the agreement in question. If this is the case, Denmark amends its legislation prior to ratification or accession by consent of the Danish Parliament. For example, amendments to the the Danish Penal Code have been adopted prior to Denmarks ratification of the International Convention for the Suppression of the Financing of Terrorism, which will take place in the near future.

Sub-paragraph 3 (e)

- **Are all the crimes set forth in the relevant international conventions and protocols included as extraditable offences in the bilateral treaties, which Denmark has concluded with other countries?**

Besides the multilateral agreements that Denmark has concluded within the framework of the European Union and the Council of Europe, Denmark has concluded bilateral treaties on extradition with USA and Canada.

The bilateral treaty on extradition that Denmark has concluded with USA on 22 June 1972 allows for extradition with regard to specific offences as opposed to a penalty threshold. According to the treaty extradition shall be granted for among others the following offences:

- Murder,
- Aggravated injury or assault,
- Kidnapping,
- Robbery,
- Extortion,
- Receiving or transporting any money, valuable securities or other property knowing the same to have been unlawfully obtained,
- Arson,
- Any act done with intent to endanger the safety of any person travelling upon a railway, or in any aircraft or vessel or bus or other means of transportation, or any act which impairs the safe operation of such means of transportation
- Piracy, mutiny or revolt on board an aircraft against the authority of the commander of such aircraft; any seizure or exercise of control, by force or violence or threat of force or violence, of an aircraft.

According to the bilateral treaty on extradition that Denmark has concluded with Canada on 30 November 1977 extradition shall be granted if the offence is punishable under the law of both parties by imprisonment for a period exceeding one year or by a more severe penalty, or, where the person claimed has been convicted of such an offence, deprivation of liberty of at least four months' duration remains to be served.

Please note that Danish extradition law does not require the existence of a treaty or a convention as a legal basis for extradition. The Danish authorities may extradite a person to a country, even though there exists no bilateral or multilateral agreement with that particular country, as long as the provisions of the Extradition Act are fulfilled.

Sub-paragraph 3 (g)

- **The exceptions to the prohibition on extradition in respect of political offences seem to apply only to requesting EU-countries. Please explain Denmark's state practice with regard to other requesting countries.**

With the new amendments of the Extradition Act an extradition cannot be refused with reference to the prohibition against extradition for political offences, if the requests for extradition is based on Article 1 or 2 of the European Convention for the Suppression of Terrorism or Article 2 of the International Convention for Suppression of Terrorist Bombing or Article 2 of the International Convention for the Suppression of the Financing of Terrorism, whether or not the extradition concerns extradition to an EU Member State or to another State that has ratified the Conventions.

Within the last five years, Denmark has not refused a request for extradition from the Member States of the European Union or other states based on the political offence exception.

- **Please outline the provisions of the amended Extradition Act.**

With regard to the new amendments reference is made to the answer to sub-paragraph 1 (a).

- **Has Denmark concluded any bilateral treaties on extradition with other countries?**

With regard to bilateral treaties on extraditions reference is made to the answer to sub-paragraph 3 (e).

Paragraph 4

- **Has Denmark addressed any of the concerns expressed in paragraph 4 of the Resolution?**

Within existing treaties and conventions and in the framework of EU and other international organisations, Denmark supports coordinated efforts to curb illegal arms-trafficking and illegal movement of NCB and other potentially deadly materials.

Denmark contributes fully to the work of the Financial Action Task Force. With the new legislative package against terrorism, including the new law against money laundering and the financing of terrorism, Denmark has fully implemented the 8 special FATF-recommendations against financing of terrorism.

Since January 2001 Denmark has held the chairmanship of the Task-Force on Organized Crime in the Baltic Sea Region. Denmark has in this capacity initiated a survey of concrete links between organized crime and terrorism in the Baltic Sea Region. The survey will cover all possible links between terrorist activities and crimes covered by the mandate of the Task-Force, including illicit drugs. A report on the survey should be finalised by early 2003. Furthermore, the Task-Force has decided to elaborate a mechanism of securing that information of possible links between organized crime and terrorism disclosed during an investigation regarding organized crime will automatically be brought to the attention of the services specialized in counter terrorism.

Other matters

- **Please provide an organisational chart of the administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.**

Reference is made to the annex of the report.

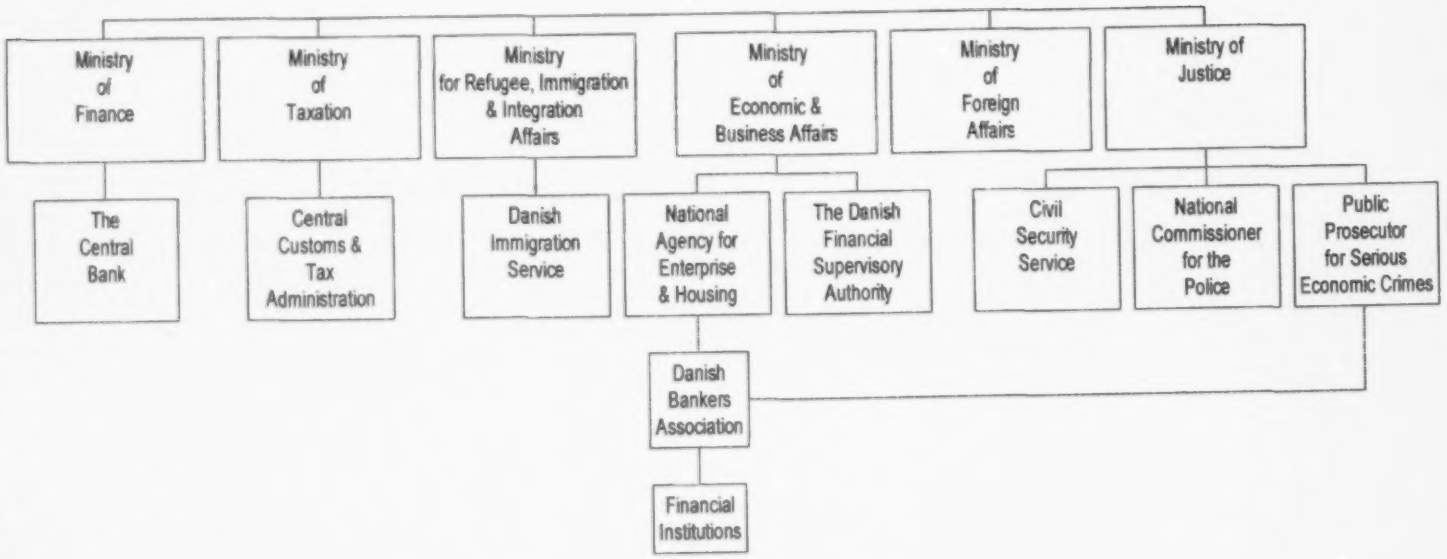
Concluding remarks

Since Denmark submitted its original report to the Committee, the Danish Parliament has adopted the Anti-Terrorism Act, which enables Denmark to ratify the Convention for the Suppression of the Financing of Terrorism. Consequently, Denmark will ratify the convention in the near future.

As set out in the original report, Denmark is fully committed to cooperating with the United Nations, its Member States and particularly with the Counter-Terrorism Committee established pursuant to Security Council resolution 1373 to combat international terrorism. Denmark stands fully behind the global efforts to implement resolution 1373 and all other relevant legal instruments against international terrorism.

Annex

Organisational chart of administrative machinery that contributes to the implementation of UNSCR 1373 (2001)


Ministry of Finance
Ministry of Taxation
Ministry for Refugee, Immigration & Integration Affairs
Ministry of Economic & Business Affairs
Ministry of Foreign Affairs
Ministry of Justice
The Central Bank
Central Customs & Tax Administration
Danish Immigration Service
National Agency for Enterprise & Housing
The Danish Financial Supervisory Authority
Civil Security Service
National Commissioner for the Police
Public Prosecutor for Serious Economic Crimes
Danish Bankers Association
Financial Institutions